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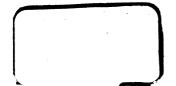






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## Patent and Trade Mark Review

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A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

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#### Index to Volume XIII.

An index to Volume XIII of the Review will be mailed with this issue to each subscriber.

#### Sweden.

Patents. Foreign Holders. Moratorium. Ordinance of Sept. 21, 1915. Effective Oct. 1, 1915.

(Translation.)

PAYMENT OF ANNUITIES IN SWEDEN.

THE ROYAL ORDONNANCE OF MAY 25TH, 1915,\* CONCERNING A DELAY FOR PAYING CERTAIN ANNUITIES.

. The Royal Palace of Stockholm, Sept. 21st, 1915.

We, Gustaf, etc.

To patentees, living outside Sweden, is granted, in cases when the time for paying such an annuity with fine, as mentioned in Section 11 of the Patent Law of May 16, 1884, expires during the period Oct. 1-Dec. 31, 1915, a delay of three calendar months counted from the day, when the annuity ultimately should have been paid, according to the said section.

This ordonnance shall come into force on the first day of Oct., 1915.

#### New Zealand.

#### Patents. Horticulture. Hybrid Plants. Proposed Protection.

We are advised by Messrs. A. J. Park & Son, of Wellington, that the New Zealand Government now recognises what has been claimed by the fruit growers and nurserymen at their respective conferences, namely, that notwithstanding the many advantages of the New Zealand Climate, horticultural research work cannot take the place it should until the Hybridist is placed in the same position as the inventor in respect of protection of his rights. There is now every prospect of this being done as the Prime Minister has promised to include provisions for the protection of raisers in their rights of propagation and distribution in the Consolidating Orchards Bill which he has promised to introduce this session.

#### Guatemala.

#### Patent Medicines. Analysis. Requirements. Order Effective Sept. 25, 1915.

The faculty of medicine and pharmacy of Guatemala by order of its board of directors, advises that on and after September 25, 1915, sales of all remedies or patent medicines that have not complied with the requirements of article 26 of decree No. 621, are prohibited in the Republic. The decree referred to requires foreigners who desire to sell special secret remedies in Guatemala to apply to the board of directors of the faculty of medicine and pharmacy for an examination of said remedies, and if the board considers such medicines desirable it will authorize their sale, withholding the secrets of their preparation. A list of remedies, the sale of which has been authorized by the faculty of medicine and pharmacy of Guatemala, will be sent in due course to the department of customs, so that their importation may be permitted. (From Bulletin of the Pan-American Union, Aug., 1915.)

<sup>\*</sup> For translation see 13 P. & T. M. Rev., 259.

#### Cuba.

#### Patent Medicines. Labels. Requirements. Notice.

On and after September 10, 1915, shipments of patent medicines should not be sent to Cuba without being labeled in accordance with the provisions of Art. 46 of the pharmacy rules and regulations now in force; which prescribe that the formu'as of foreign pharmaceutical specialties, before being placed on sale, shall be submitted to the Board of Health by agents or importers, and their sale will not be authorized unless the following requisites are complied with:

- (a) Indicate on the labels the name of the components to which the remedy owes its medicinal properties;
- (b) Indicate at the same time on the labels the name of the pharmacist authorized in the country in which the medicine was manufactured.

All pharmaceutical specialties, therefore, which after September 10, 1915, are exported to the Republic of Cuba without fulfilling the requirements referred to will subject the importer to the penalties imposed by law. After the date mentioned patent medicines which have not fulfilled these requirements, unless it can be shown that they were exported from the country of origin prior to September 10, 1915, cannot be sold in the Republic. (From Bulletin of the Pan-American Union, Aug., 1915.)

#### Austria.

# Trade Marks. Renewal. Prolongation of Term. Decree of June 24, 1915. (Translation.)

Decree of the Ministry of Public Works, with the consent of the Ministries of Commerce and Justice, of June 24, 1915, R. G. Bl., No. 177, relating to a supplementing of the decree of September 24, 1914, (translation of which see 13 P. & T. M. Rev., 35), by virtue of which, due to martial complications, exceptional measures are taken in matters relating to trade mark protection.

On the ground of the Imperial decree of August 29, 1914, R. G. Bl., No. 227, relating to the influence of martial events upon days of grace, fixed terms and procedure it is decreed as follows:

#### ARTICLE I.

Section 1. The decree of the Ministry of Public Works, with the consent of the Ministries of Commerce and Justice of September 24, 1914, R. G. Bl., 257, shall read:

"A term up to three months, reckoned from the day to be fixed by decree, is granted for the renewal of marks that should have been renewed or are to be renewed within the period commencing from July 26, 1914, in order to maintain the trade mark right in accordance with the provision of section 16 of the law for the protection of trade marks of January 6, 1890, 'R. G. Bl., No. 19."

Section 2. This decree comes into operation on the day of publication.

The decree of December 24, 1914, (notice of which see 13 P. & T. M. Rev., 131) is abrogated simultaneously. (From Oesterreichisches Patentblatt, 1915, p. 167.)

#### France-International Union.

Designs. Models. Proof of Priority, "Soleau Method." Transmission of Copies to International Bureau at Berne. Order of May 7, 1915.\*

(Translation.)

#### ORDER

AUTHORIZING THE TRANSMISSION TO THE INTERNATIONAL BUREAU OF INDUSTRIAL PROPERTY OF SPECIAL ENVELOPES PROVIDED FOR BY THE DECREE OF MARCH 10, 1914, AND THE MINISTERIAL ORDER OF MARCH 13, 1914, FOR PROOF OF THE PRIORITY OF THE CREATION OF DESIGNS AND MODELS. (May 7, 1915.)

The Minister of Commerce, Industry. Posts and Telegraphs,

In view of Art. 4 of the Law of July 14, 1909,† concerning designs and mode's;

In view of Art. 5 of the Law of March 10, 1914,§ issued in Execution of Art. 4, above noted, of the Law of July 14, 1909;

In view of the Ministerial Order of March 13, 1914,8 fixing the conditions for the application of the above noted Decree of March 10, 1914, relative to the proof of the date of creation of designs and models;

In view of the opinion of the Technical Commission of the National Office of Industrial Property,

#### ORDERS:

Art. 1. The special double envelope in accordance with the model approved by Ministerial Order of March 13, 1914, and containing two identical copies of the designs or graphic representations whose priority of creation it is desired to prove, may, on application of those interested, after being registered and perforated at the National Office of Industrial Property, be transmitted in the care of the National Office to the International Bureau of the Union for the Protection of Industrial Property, established at Berne, which, after registration, separates the two compartments of the envelope, returns one of them to the sender, and keeps the other in its archives for a duration of five years.

The copy thus preserved may be transmitted to the courts in case of judicial inquiry, under the conditions provided in Art. 6 of the above noted Order of March 13, 1914.

Art. 2. The request for the purpose of the transmission of the envelope to the International Bureau should be drawn up by the interested party at the moment of the sending of the envelope to the National Office of Industrial Property.

In this case, the total fee for registration and safe-keeping, having in view Arts. 4 and 6 of the Order of March 13, 1914, is fixed at three francs per envelope.

Paris, May 7, 1915.

(Signed) GASTON THOMPSON.

(From La Propriété Industrielle, Aug., 1915.)

<sup>†</sup> For translation of this law see 8 P. & T. M. Rev., 2929. † For translation of this Decree see 12 P. & T. M. Rev., 298. § For translation of this Order see 12 P. & T. M. Rev., 299.



<sup>\*</sup> See also International Union—France, Regulation of June 2, 1915, in this issue of the Review, p. 6.

#### International Union-France.

Designs. Models. Proofs of Priority. "Soleau Method." Regulation of June 2, 1915.\*

(Translation.)

#### REGULATION

CONCERNING THE REGISTRATION AND SAFE-KEEPING, AT THE INTERNATIONAL BUREAU, OF PERFORATED ENVELOPES FOR PROOF OF THE PRIORITY OF CREATION OF DESIGNS AND MODELS. (June 2, 1915.)

On application of the French Administration, and after having been authorized thereto by resolution of the Swiss Federal Council, of date Aug. 4, 1914, the International Bureau of Industrial Property has established a department for the registration and safe-keeping of perforated envelopes known as "envelopes Soleau," which are intended to establish the priority of creation of designs and models.

This service shall be carried on under the following conditions:

- Art. 1. The National French Office of Industrial Property shall transmit to the International Bureau designs or models, whereof the owners desire to be able to establish the priority of creation, in two identical copies, contained, each, in one of the two compartments of a special double envelope containing the design or model, with a perforation indicating the serial number and the date of reception.
- Art. 2. The International Bureau shall register the envelopes received in a register containing the following captions:
  - (a) Date of arrival;
  - (b) International serial number.
  - (c) Name and address of the sender;
  - (d) Date of arrival at the National Office (perforated);
  - (e) National serial number (perforated);
  - (f) Observations.

After having separated the two folds that constitute each envelope, the International Bureau shall indicate upon each of them the date of arrival and the serial number of the International registration—indications that shall be certified by the signature of the functionary charged with this service.

- Art. 3. One of the two envelopes shall be returned forthwith to the sender; the other shall be kept in the archives of the International Bureau.
- Art. 4. At the commencement of each month the National Office shall pay to the International Bureau the fee of one franc for each envelope sent during the course of the preceding month, by indicating the perforated numbers of the envelopes to which the payment refers, as well as the names of the senders.
- Art. 5. The envelopes deposited in the archives of the International Bureau shall be kept there for five years. At the expiration of this term they shall be destroyed, unless the deposit be renewed previously for a new period of the same duration. The procedure for renewal shall be determined through agreement between the National Office and the International Bureau.
  - Art. 6. In case of litigation, or for other necessary reasons, the sender may

<sup>\*</sup> See also France—International Union. Order of May 7, 1915, in this issue of the Review,  $p,\ 5.$ 

make application to the International Bureau to send the envelope deposited by him, which he shall designate by its International number, to a judicial or administrative authority, only, which, after examination, shall return it to the International Bureau. The envelopes on their return shall be endorsed with a memorandum evidencing the transmission made outside, and redeposited in the archives until the expiration of the term of deposit.

Art. 7. The International Bureau shall extend the application of the service above indicated to all those of the States of the Union for Industrial Property that shall make application thereto for same.

Berne, June 2, 1915.

International Bureau of the Union for Industrial Property:

The Director,

Comtesse.

Note: On the subject of this new service it has been agreed as follows: The French Administration may at any time abandon the continuation of the service instituted by the present Regulation. On its part, the International Bureau may give up this service through a preliminary notice of six months to the French Administration, if inconveniences result therefrom, and, particularly, if the receipts from this service do not suffice to cover the expenses thereof. (From La Propriété Industrielle, Aug., 1915.)

### Italy.

# Industrial Property. War Measures. Temporary Decree of June 20, 1915. (Translation.)

Temporary decree concerning the terms for payments relative to industrial property and for the acts necessary for maintaining patents in force, as well as other transitory provisions for the preservation of industrial property. (June 20, 1915, No. 962.\*)

Tomaso di Savoia Duca di Genova, Lieutenant General of His Majesty, Vittorio Emanuele III, by the Grace of God and Will of the Nation, King of Italy,

By virtue of the authority delegated to Us;

In view of the law of May 22, 1905, No. 671, concerning the delegation of extraordinary powers to the Government in case of war and during war;

In view of the laws of Oct. 30, 1859, No. 3731, concerning industrial patents, Aug. 30, 1868, No. 4577, concerning distinctive marks and signs of manufacture and of commerce, and Aug. 30, 1868, No. 4578, concerning manufacturers' designs and models:

On the proposal of the Minister Secretary of State for Agriculture, Industry, and Commerce, in concert with the Minister of the Treasury;

WE HAVE DECREED AND DO DECREE:

Art. 1. Soldiers in active service, those employed with the army and the navy, and persons that find themselves by reason of service connected with the army and the navy, may defer the payment of fees for applications for patents of industrial inventions and for manufacturers' models and designs, and for the registry of marks of manufacture and commerce until the sixtieth day following that of the publication of peace. Applications presented by said persons,

<sup>\*</sup> Published in the Gazzetta Ufficiale, July 2, 1915, No. 165.

when they are not accompanied by the receipt for the fee, shall be held in suspense until the term indicated.

Art. 2. The persons indicated in the preceding article may defer the payment of the taxes and the performance of the acts prescribed by law for the maintenance in force of industrial patents, and apply for the prolongation thereof until the last day of the quarter succeeding that wherein peace shall be published, if the terms for said acts or payments were not yet expired at the moment of the declaration of war. Native holders of certificates of patent that are prevented by circumstances due to the state of war from effecting the payment and from fulfilling the necessary procedure are entitled to the same advantages, within the terms of the prescribed law, in order to maintain in force and prolong their patents.

Art. 3. The provisions of the preceding article shall be applied also to foreign owners of industrial patents, subjects of States that guarantee equal advantages to Italian owners of patents. The existence of reciprocal treatment shall be acknowledged by decree of the Minister of Agriculture, Industry, and Commerce.

Art. 4. The publication of the list of patents for which the fee due was not paid in the required time, according to Art. 43 of the Regulation approved by Royal Decree, Oct. 2, 1913, No. 1237,\* is suspended, to commence with that having to do with patents for which the last term of payment falls due the thirtieth of June, 1915, until that concerning payments effected at the end of the quarter following that wherein peace shall be published.

Certificates of prolongation applied for, following the expiry of the term of the patent of persons that show that they are in the circumstances provided by Arts. 2 and 3, shall be granted, if the said term had not expired at the moment of the declaration of war.

Art. 5. The grant of certificates of industrial patents, the registration of manufacturers' models and designs, the deposit of distinctive marks and signs of manufacture, and the registration of assignments of patents and of marks in favor of foreigners belonging to States that are found in state of war with Italy, are suspended until after the publication of peace.

Art. 6. The present decree shall be effective from its date.

We order that the present decree, under seal of the State, be inserted in the official collection of the laws and decrees of the Kingdom of Italy, commanding those concerned to observe it and cause it to be observed.

Given at Rome on the twentieth day of June, 1915.

(Signed) TOMASO Di SAVOIA, SALANDRA—CAVASOLA—CARCANO.

(From 14 Bollettino della Proprietà Intellettuale, Fasc. 7-8.)

#### Kedah.\*

Patents. Law. Enactment No. 16 of 1332 (1915).

On the 27th day of Zulbijjah 1332 in the reign of His Highness Sir Abdul Hamid Halimshah, K.C.M.G., ibn Sultan Ahmad Tajudin Mukarramshah, re-

<sup>\*</sup> Kedah—one of the British protected Malay States—lies on the western side of the Malay Peninsula, has a population of approximately a quarter of a million, and comprises 3,800 square miles. The capital is Alor Star. The revenues of the government for the year 1912 amounted to 2,045,322 (trade) dollars. The principal products are rice, rubber, cocoanut and taploca.



<sup>\*</sup> See 12 P. & T. M. Rev., 175.

KEDAH 9

siding at his capital of Alor Star in Kedah Darulaman, His Highness Tunku Ibrahim ibn Sultan Sir Abdul Hamid Halimshah being Regent; His Highness the Regent agreeing with the State Council of Kedah confirms this Enactment and affixes his Signature and Seal hereto, whereby the Enactment comes into force from the date hereof:

- 1. This Enactment may be cited as "The Inventions Enactment 1332."
- 2. Any person who has obtained a grant (or a renewal of a grant) of patent rights or exclusive privileges for the use of an invention in the Colony of the Straits Sett'ements or in the Federated Malay States may petition the President of the State Council for a grant of exclusive privileges for the use of such invention in the State of Kedah.
- 3. Such petition shall be in writing, and shall be accompanied by a duly certified copy of the grant of patent rights or exclusive privileges in the Colony of the Straits Settlements or in the Federated Malay States, as the case may be, and a duly certified copy of the complete specification of the invention.
- 4. The President of the State Council, if he is satisfied that the granting of exclusive privileges for the use of such invention in Kedah would not be prejudicial to the public interest, may cause the certified copy of the grant in the Colony or the Federated Malay States, as the case may be, to be registered in his office, and such registration shall have the effect of conferring upon the grantee, for the term of his grant, the same privileges in Kedah as shall have been conferred upon him by the grant in the Colony or the Federated Malay States.
- 5. (1) If the patent rights or exclusive privileges granted in the Colony or the Federated Malay States are at any time revoked, the privileges conferred on the grantee by registration under Section 4 hereof, shall *ipso facto* terminate on the date of such revocation.
- (2) Except as in section 6 hereinafter provided, if the term of any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration extended in the Colony or the Federated Malay States, as the case may be, the privileges conferred upon the grantee by such registration shall terminate on the date on which they would have terminated had the term not been so extended.
- (3) Except as in section 7 hereinafter provided, if any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration amended in the Colony or the Federated Malay States, as the case may be, the privileges conferred upon the grantee by such registration shall ipso facto terminate on the date when such amendment was allowed and recorded in the Colony or the Federated Malay States.
- 6 If the term of any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration extended in the Colony or the Federated Malay States, as the case may be, and the grantee desires the extension to take effect in Kedah, he shall transmit to the President of the State Council a certificate of such extension together with a petition praying that such extension may take effect in Kedah. Upon receipt of such certificate and petition, the President may allow or refuse to allow the extension to take effect in Kedah, as he may deem proper.
- 7. Whenever an amendment relating to any invention as to which privileges have been obtained in Kedah by registration under section 4 hereof has been

allowed and recorded in the Colony or the Federated Malay States, as the case may be, and the grantee desires the amendment to take effect in Kedah he shall transmit to the President of the State Council a duly certified copy of the amended grant and a duly certified copy of the amended specification together with a petition praying that such amendment may take effect in Kedah. Upon receipt of such certified copies and petition, the President may allow or refuse to allow the amendment to take effect in Kedah, as he may deem proper.

8. The grantee shall without delay transmit to the President of the State Council written particulars of every assignment of his patent rights or exclusive privileges in the Colony or the Federated Malay States.

9. In the Office of the President of the State Council there shall be kept a register wherein shall be entered particulars of all petitions and grants under this Enactment and particulars of all transactions relating to such petitions and grants. The petitions shall be numbered serially.

10. The following fees shall be paid by the grantee:

For registration under section 4 \$50—00
For extension " " 6 \$25—00
For amendment " " 7 \$25—00

(From Supp. No. 16, 11th Ed., Patent Laws of the World, of Chartered Institute of Patent Agents.)

#### Argentine Republic.

Trade Marks. Trade Names. Infringement. Decision.
DECISION OF THE SUPREME COURT.

Buenos Aires, Nov. 10, 1914.

NULLITY OF A MARK.—THE ARGENTINE LAW PROTECTS THE RIGHT TO A NAME WITHOUT CONDITION OF RECIPROCITY, AND WITHOUT DISTINCTION OF NATIONALITY.—
IT HAVING BEEN JUSTIFIED THAT THE MARK, WHEREOF THE AVOIDANCE IS REQUESTED, BORE AS DENOMINATION THE NAME OF A CORPORATION LEGALLY CONSTITUTED, AND THAT USE HAD BEEN MADE OF ITS CORPORATE NAME IN THE COUNTRY PRIOR TO THE REGISTRATION MADE BY THE DEFENDANT, THE NULLITY OF THE DEPOSIT MUST BE DECLARED.

Corporation Aux Galeries Lafayette v. Luis Ricard.

ON APPEAL.

Having reviewed: For the reasons given it is affirmed, with the costs of , the case appealed of folios 66, that it be ordered that the mark "Aux Galeries Lafayette, Paris," granted under No. 22,983, in favor of Luis Ricard, be annulled.

Be it communicated, returned, and the folios replaced in the Court of Origin.

(Signed) J. N. MATIENZO,

Angel Ferreira Cortés,

E. VILLAFANE.

DANIEI, GOYTIA.

(Translation from 15 Patentes y Marcas, 641.)

The decision from which appeal was made—of the Federal Court—is as follows:

Buenos Aires, May 27, 1914.

AFTER CONSIDERATION: IT RESULTS

That in folios 6 Mr. Alberto Lodieu appears, representing the Corporation

"Aux Galeries Lafayette," presenting application against Mr. Luis Ricard, concerning the nullity of mark No. 22 983, granted to said gentleman by the respective Office on April 30, 1909.

Justifying his action, he says: That Mr. Luis Ricard, in his character of employé of the Corporation that he represents was entrusted with the installation of various branches of "Aux Galeries Lafayette" in South America, one of which was to be estab ished at Buenos Aires. To this end Mr. Ricard signed in Paris the corresponding article of conditions that was to hold from Aug. 1, 1908:

That, in fulfillment of this obligation, Mr. Ricard proceeded to take in leasehold a store, by the drawing up of the instrument in writing, and fixtures for the purpose of opening a branch;

That in these circumstances, the defendant, employed by the plaintiff Corporation, applied to the Trade Mark Office on his own account for a trade mark to distinguish modes, goods, novelties, and fancy articles, corresponding to the numbers of nomenclatures V, VI, and VII, or classes 36 to 60 inclusive. The mark applied for was composed of the following fancy words "Aux Galeries Lafayette"—"Paris." That the Trade Mark Office, under date of April 30, 1900 acceded to the solicitation by Mr. Luis Ricard, granted him, under No. 22,983, the mark already referred to;

That in October of 1909, Mr. Ricard withdrew from the house of "Aux Galeries Lafayette," and proceeded to make use of the mark obtained through deception, by presenting himself before the Federal Judge, making complaint for falsification of mark against Mr. Eugenio Sadin;

That as means of prudence intended to avoid new and future complications his (Lodieu's) principal has considered it proper, even if unnecessary, to ask the registration as a mark of its corporate name;

That Mr. Ricard is wanting in right to the registration made, as national and foreign doctrine and jurisprudence interprets it. That the words "Aux Galeries Lafayette" being the name of a corporation the defendant, an employé of the same, could not register them for himself as a mark;

That Arts. 42, 45, and 47 of the Trade Mark Law protect the ownership of the name of a corporation, and establish that the formality of registration is unnecessary. He concludes by showing that the considerations that precede, and the others presented in his application, are sufficient to justify the application for avoidance of the mark unduly granted to Mr. Luis Ricard.

It being shown to the Defender of Absentees, Dr. Raffo, that the domicile of the defendant was not known. he gave proof of same on folios 46, soliciting the dismissal of action with costs. He sets forth: That the registration in the name of the defendant of the mark referred to, with the designation of the house of the plaintiff, is a licit act that, by itself, cannot be the subject of any declaration of nullity;

That the ownership of the name of the house, which the plaintiff may have or not, is one thing, and the ownership of a mark, which the law protects equally to the owners of the name and to those of the mark is another. That nothing prevents the name of the house being adopted by another merchant as a mark of manufacture for distinguishing products and wares, the more so when the plaintiff does not express even the kind or the class of business to which he is devoted. He concludes by showing that the same antecedents of jurisprudence and doctrine that the plaintiff cites are the best justification for the action brought.

The case being opened to proof, there was produced what is expressed in

the certificate of the Clerk of folios 57, and, after both parties had testified concerning the merits on folios 58 and folios 62, judgment was pronounced.

AND, CONSIDERING:

- 1. That the plaintiff Corporation has in the trial sufficiently accredited its existence and representation, it having been proven that it exists under the denomination "Aux Galeries Lafayette," a joint stock company, having the principal seat of its business in the city of Paris (France);
- 2. That with the proof produced it has been conclusively proven that said Corporation, devoted to trade in cloths, haberdashery, ready-made goods, and similar wares, had introduced and sold its products prior to the date on which the defendant, Mr. Ricard, registered the mark "Aux Galeries Lafayette." That it is to be noted, on the other hand, that this fact could not have been unknown by Mr. Ricard, inasmuch as he was employed by the plaintiff Corporation, and in this capacity established in this city a branch of the same;
- 3. That Art. 42 of Law 3973 has established, in ample terms, that the name of the agrarian, merchant, or manufacturer, and the corporate name, that of the sign or the designation of a house or establishment that handles those wares or specified products, constitute property for the effects of this law. In said article there is no distinction between Argentine or foreign corporations or persons. It thus recognized, without distinction, absolutely, the right to the name, acceptable to the laws of other countries, and without which international trade would suffer frequent and grave perturbations;
- 4. That that right to the name, wherein joint stock corporations likewise participate, as the provision of Art 45 expresses, is not invalidated by the formality of registration required for marks. It is a right exempt from all formality that might fetter or limit it, and for whose effectiveness there is alone required the actual existence of the person or corporation that exercises his or its activity as agrarian, merchant, or manufacturer;
- 5. That the plaintiff Corporation has amply justified, with the proof produced, the effectiveness of its mercantile relations and operations with this place prior to the date whereon the defendant registered the mark "Aux Galeries Lafayette." That the defendant, on the contrary, has not shown himself to be a trader or manufacturer of the wares that the mark registered by him distinguishes; and, what is more, it is evident from the hearing that he was an employé of the plaintiff Corporation, entrusted with the establishment of a branch in this city;
- 6. That under these circumstances it is of strict right and plain justice to prohibit Mr. Ricard from using a name characteristic of the products of others, which were dealt in and known here prior to the registration effected by him, inasmuch as that name has not as yet served him for making known and accrediting wares of his own, since, as is proven by the testimony, he is neither merchant nor manufacturer.

WHEREFORE, DECIDING, I DECREE:

Declaring the justification of the present action brought by the Joint Stock Corporation "Aux Galeries Lafayette," and ordering, in consequence, that the respective Office annul the mark "Aux Galeries Lafayette" "Paris," No. 22,983, registered improperly by Mr. Luis Ricard, April 30, 1909, to distinguish articles comprised in classes 36 to 60; with costs on Ricard.

Let it be known, etc.

(Signed) T. ARIAS.

(Translation from 15 Patentes y Marcas, 270.)



#### Australian Commonwealth.

Patents. Applications. Prescribed Term. Patents (Temporary) Regulations, 1914 (Sec. 8). Decision.

#### COMMONWEALTH OF AUSTRALIA

Department of Patents,
Patent Office.

Melbourne, 8th July, 1915.

#### Gentlemen:

I have to advise you that the application filed by you on the 1st ultimo for an enlargement of time under Regulation 8 of the Patents (Temporary) Regulations, 1914,\* in which to file an application for a patent in the name of Anders Jordahl has been refused by the Minister.

The grounds on which the refusal is based are as follows:

No time has been prescribed by the Act or Regulations within which an application may be lodged. It is, therefore, quite open to the applicant at the present, or at any future time, to lodge an application.

Regulation 8 is designed to enable steps to be taken which cannot in the ordinary course be taken within prescribed times by reason of the expiry of these times. The circumstance that, unless the application is lodged within a certain time, a valid patent cannot be granted on the application does not make that time a prescribed time.

am,
Your obedient servant,
(Signed) R. G. Ferguson,
Deputy Commissioner of Patents.

Messrs. Phillipps, Ormonde & Co., 17 Queen Street, Melbourne.

Our correspondents—Messrs. Phillips, Ormonde & Co., of Melbourne,—have supplied us with the following facts in connection with the above case. It relates primarily to an application under the provisions of the Temporary Regulations, which provide for an extension of time for taking action in connection with patent cases when it can be proved that delay occurred through war conditions. In this case the inventor was a German subject who assigned his invention to a subject of the King of Norway. The latter—a resident of Berlin—desired to apply for a patent in Australia, but owing directly to the war and to the difficulty of correspondence, the documents arrived in the Commonwealth after the British printed specifications had been published in Australia. The benefits of the Convention cou'd not be availed of because the applicant was not the person that had originally applied for protection in the country of origin.

The Attorney General decided that the War Regulations only provide for an extension of a time that is "prescribed" by the Act or Regulations, and does not apply to a case of the kind mentioned.

Our informants suggests further that it is possible that "if the case had been

<sup>\*</sup> For text of this Regulation see 13 P. & T. M. Rev., 181.

one that could have been filed under the Convention and had arrived after the expiration of the prescribed period of twelve months, the application might have been favorably considered, because, in such instances, there would have been a 'prescribed' time specified in the Act and Regulations."

# Patents. Applications. Convention. Claims Within Scope of Original Specification Allowable. Decision.

IN THE MATTER of the Patents Act 1903-1909\* and

IN THE MATTER of Patent Application No. 13409 and

IN THE MATTER of an Appeal to the Law Officer from the decision of the Commissioner of Patents.

#### DECISION OF THE LAW OFFICER

Edward Ray Weidlein of Pittsburg, in the United States of America, made an application for a Patent in the United States for an "Improvement in hydrometallurgy of copper."

The application was filed in the Patent Office of the United States on the 27th October, 1913. On the 3rd June, 1914, he filed an application for a similar patent in the Commonwealth Patent Office at Melbourne, and claimed under Section 121 of the Patents Act 1903-1909 that the Patent to be granted for his invention should have date as of the 27th October, 1913. When the specification filed with the Australian application was compared with the specification originally filed with the United States application, it was found that there were several differences between the two specifications, and objection was raised in the Patent Office to the inclusion of certain additional claims. The applicant by his agent applied for a hearing on the matter and the matter was heard before the Commissioner. On the 28th April, 1915, the Commissioner gave his decision on the matter as follows:

"This is a matter of an application for a patent in terms of Section 121 for an 'Improvement in hydro-metallurgy of copper' to which objection has been taken on the ground that there is a material difference between the invention forming the subject of the Commonwealth application and the invention forming the subject of the application originally lodged in the United States of America by the fact that the Commonwealth specification includes additional claims, namely, 4 and 11—and that the preferred strength of 1.5% copper has been specifically widened in both description and claims to include solutions containing not more than 3% copper.

"Having heard the applicant, by his agent, I am of opinion that objection lies only in regard to claim 4 which comprises or covers subject-matter not claimed in the originating specification. I therefore direct that the specification be amended by the deletion of claim 4. Compliance with this direction must be effected within one month from this date; failing such compliance, my decision is to be taken as a refusal to accept the application and complete specification."

<sup>•</sup> For texts of Patents Act, 1903, see 2 P. & T. M. Rev., 679, 687, 737, 769, 788; of Patents Act, 1906, vol. 5, p. 1819; of Patents Act, 1909, vol. 8, p. 3035, the whole constituting Patents Act, 1903-1909.



From this decision the applicant appealed under Section 43 of the Act. The grounds of appeal are as follows:

- (1) "That the said Commissioner was wrong in deciding that the subject matter of claim 4 of the specification filed in the Commonwealth is not contained in the invention the subject matter of the application for patent fied in the United States of America on the 27th day of October, A. D. 1913.
- . (2) "That the said Commissioner was wrong in deciding that there was a material difference between the invention forming the subject matter of Commonwealth application for patent and the invention forming the subject matter of the application for patent originally lodged in the United States.
- (3) "That the decision of the said Commissioner was erroneous inasmuch as upon the evidence he should not have decided that because the subject matter of claim 4 of the Australian specification was not claimed in the specification as originally filed in the United States the said claim 4 should be deleted from the Australian specification.
- (4) "That on the proper construction of Section 121 of the Patent Act 1903-1909 the appellant is entitled on the evidence to have the whole of his specification accepted by the said Commissioner.
- (5) "That the decision of the said Commissioner was erroneous in point of fact.
- (6) "That the decision of the said Commissioner was erroneous as a matter of law."

The appeal came on before me for hearing on the 1st inst., when Mr. Braham (instructed by Messrs. Phillips Ormonde & Co.) appeared as Counsel for the appellant and Mr. E. J. L. Avdall, Acting Chief Examiner of Patents for the Commissioner.

Having considered the arguments and authorities advanced on the part of the applicant and of the Commissioner, I am of opinion that the appeal ought to be allowed. It was pointed out to me that the Patent had issued on the United States application and that the specification on which the Patent had been granted was in the same terms and contained the same claims as the specification filed in the Patent Office in the Commonwealth, and that the specification consequently must have been amended while the proceedings were pending in the United States Patent Office, and that under the law of the United States of America you cannot add anything to a specification after filing which would alter the character of the invention.

Mr. Braham also gave me reference to different parts of the specification which he contended were clearly sufficient to cover all that was claimed in claim 4. Having read the specification I have come to the conclusion that claim 4 is covered by and is properly claimable under the specification as originally filed in the Patent Office of the United States of America. The reason for its omission appears to me to be wholly immaterial—the sole question in my opinion being the question whether it is covered by and properly claimable under the invention as described in the original specification. Having come to the conclusion that it is so properly claimable, I think that there is no objection to its inclusion in the Australian specification.

Identity of invention between the invention described in the original United States specification and the invention described in the Australian specification is

no doubt essential, but that identity would not be destroyed by the inclusion in the later specification of a claim which could have been properly included in the earlier specification.

I gather from the argument on behalf of the Commissioner that the objection in the Patent Office to the inclusion of claim 4 was really that claim 4 was a material claim and that it was necessary to give to each material claim a distinct value, and it was not seriously contended to me that claim 4 could not have been included in the original American specification if the inventor had seen fit to include it therein. If any such claim had been advanced it would have been effectively answered by the fact that the United States Patent Office had subsequently permitted its inclusion.

The Commissioner in his decision says that claim 4 comprises or covers subject-matter not claimed in the original specification. I am not clear what he means by this, but if he means that claim 4 is not covered by and properly claimable in respect of the invention, then I disagree with him. Mr. Avdall would go no further than to contend that the inclusion of claim 4 gave rise to a material difference between the two specifications, and I presume that in really the basis on which the Commissioner's decision is founded. If it is, then I think the basis is not a correct one, because materiality in the addition claim is not the true test.

A first or original specification in the case of an application under Section 121 might be accompanied by a provisional specification only and such a specification need not and does not in practice include any claim whatever. In such a case the specification filed in the Commonwealth would almost necessarily differ from the original specification as the latter would have no claim included in it, whereas the Commonwealth specification must have at least one claim inc'uded in it. Consequently the fact that a claim, however material, is not in the original specification, but is in the later specification is not by any means conclusive that the later specification contains subject matter not included in the original There may be perfect conformity between a provisional specification containing no claims and a complete specification containing a dozen or more claims each of which is material. So likewise there may, in my opinion, be complete identity of invention as regards an original specification and a subsequent specification notwithstanding that the latter has more claims than the former, and that each of the additional claims is material. The only difference in substance might be that the invention was more fully ascertained and described in the later specification, and in my opinion that is the case here.

Even if the case were in the balance. I think that the elimination of claim 4 ought not to be insisted upon, because in that case the applicant would be deprived of all remedy in the Courts, as the only appeal from a direction such as that given by the Commissioner is to the Law Officer and no appeal is given from the Law Officer to the Court.

I al'ow the appeal and I order that the Commissioner's direction that the specification be amended by the deletion of claim 4 be reversed, and I direct that in the absence of any other lawful ground of objection the applicant's application and specification be accepted without any condition as to the deletion of claim 4.

(Signed) GORDON H. CASTLE,

7/7/15. Law Officer.

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#### British Guiana.

#### Trade Marks. Law. Ordinance No. 27 of Nov. 24, 1914.

AN ORDINANCE TO MAKE PROVISION FOR THE INTRODUCTION OF THE ENGLISH LAW RELATING TO TRADE MARKS. [24th November, 1914.]

Be it enacted by the Governor of British Guiana, with the advice and consent of the Court of Policy thereof, as follows:

#### Short Title.

1. This Ordinance may be cited as The Trade Marks Ordinance, 1914.

#### DEFINITIONS.

#### Interpretation of Terms.

- 2. In this Ordinance-
- A "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof:
- A "trade mark" means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale:
- "A registrable trade mark" means a trade mark which is capable of registration under this Ordinance:
- "The Registrar" means the Registrar of British Guiana:
- "The seal of the Registrar" means the seal of the office in which the Register of Trade Marks is kept.
- "The Register" means the register of trade marks kept under this Ordinance:
- A "registered trade mark" means a trade mark which is actually upon the register:
- "The Court" means the Supreme Court of British Guiana:

#### SEAL

3. The Registrar shall use a seal having a device and impression of the Royal Arms with a label surrounding the same and the inscription "Registrar of Trade Marks, British Guiana," and the use of such seal from and after the 1st day of January, 1915, is hereby validated and authorized.

#### REGISTER OF TRADE MARKS.

4. There shall be kept for the purposes of this Ordinance at the Office of the Registrar in Georgetown. a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the dates of their registration, the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may be prescribed. The register shall be kept under the control and management of the Registrar.

#### Trust Not To Be Entered on Register.

- 5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.
  - Inspection of and Extract from Register.
  - 6. The register shall during office hours be open to the inspection of the



public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Registrar, of any entry therein shall be givn to any person requiring the same on payment of the prescribed fee.

#### REGISTRABLE TRADE MARKS.

#### Trade Mark Must Be for Particular Goods.

7. A trade mark must be registered in respect of particular goods or classes of goods.

#### Registrable Trade Marks.

- 8. A registrable trade mark must contain or consist of at least one of the following essential particulars:
  - (1) The name of a company, individual, or firm represented in a special or particular manner;
  - (2) The signature of the applicant for registration or of some predecessor in his business;
  - (3) An invented word or invented words;
  - (4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
  - (5) Any other distinctive mark;

but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Court, be deemed a distinctive mark.

Provided always, that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the 13th August, 1875, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration, shall be registrable as a trade mark under this Ordinance, if it is already registered in the United Kingdom as an old mark used before the said date.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the Registrar may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

#### Coloured Trade Marks.

9. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

#### Restriction on Registration.

10. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a Court of Justice, or would be contrary to law or morality, or any scandalous design.

#### REGISTRATION OF TRADE MARKS.

#### Application for Registration.

- 11.—(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.
- (2) Subject to the provisions of this Ordinance the Registrar may refuse an application or may accept it absolutely or subject to conditions, amendments, or modifications.
- (3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing and communicate to the applicant the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court. The Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.
- (4) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as herein prescribed.
- (5) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as he or it may think fit.

#### Advertisement of Registration.

12. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the applicant shall, as soon as may be after such acceptance, cause the application, as accepted, to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

#### Opposition to Registration.

- 13.—(1) Any person may, within the prescribed time from the date of the advertisement of an application for registration of a trade mark, give notice to the Registrar of opposition to such registration.
- (2) Such notice shall be given in writing in the prescribed manner and shall include a statement of the grounds of opposition.
- (3) The Registrar shall send a copy of such notice to the applicant, and, within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.
- (4) If the applicant sends such counter-statement within the prescribed time the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.



- (5) The decision of the Registrar shall be subject to appeal to the Court.
- -(6) An appeal under this section shall be made in the prescribed manner and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether and subject to what conditions, if any, registration is to be permitted.
- (7) On the hearing of any such appeal any party may, either in the manner prescribed, or by special leave of the Court, bring forward further material for the consideration of the Court.
- (8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or Registrar other than those stated by the opponent as hereinabove provided, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.
- (9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.
- (10) The Registrar or in the case of an appeal, the Court shall have the power in proceedings under this section to award to any party costs of such proceedings or any part thereof and to direct how and by what parties and on what scale they are to be paid. Such costs shall be taxed before the Registrar of the Supreme Court and shall be recoverable in the same manner as costs in an action.
- (11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the Colony, the Registrar or the Court may require such party to give security for costs of the proceedings before it relative to such opposition or appeal and, in default of such security being duly given, may treat the opposition or appeal as abandoned.

#### Disclaimers.

14. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which the Registrar or the Court holds him not to be entitled, or that he shall make such other disclaimer as the Registrar or the Court may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

#### Date of Registration.

15. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or, having been opposed, the opposition has been decided in favour of the

applicant, the Registrar shall register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Ordinance to be the date of registration.

#### Certificate of Registration.

16. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand and seal of the Registrar.

#### Non-completion of Registration.

17. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

#### IDENTICAL TRADE MARKS.

#### Identical Marks.

18. Except in the case of trade marks in use before 13th August, 1875, which are registered in the United Kingdom as old marks used before the said date, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

#### Rival Claims to Identical Marks.

19. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or on appeal by the Court.

#### Concurrent User.

20. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do, the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

#### ASSIGNMENT.

#### Assignment and Transmission of Trade Marks.

21. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

#### Apportionment of Marks on Dissolution of Partnership.

22. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Ordinance as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Court.

#### ASSOCIATED TRADE MARKS.

23. If application is made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as in the opinion of the Registrar to be calculated to deceive or cause confusion if used by a person other than the applicant, the Tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

#### Combined Trade Marks.

24. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately, he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Ordinance be deemed to be a'so a user of such registered trade marks belonging to the same proprietor as it contains.

#### Series of Trade Marks.

- 25. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—
  - (a) statement of the goods for which they are respectively used or proposed to be used; or
  - (b) statements of number, price, quality, or names of places or
  - (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
  - (d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

#### Assignment and User of Associated Trade Marks.

26. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that, where under the provisions of this Ordinance user of a registered trade mark is required to be proved for any purpose, the Registrar or the Court may, if and so far as

it shall think right, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

#### RENEWAL OF REGISTRATION.

#### Duration of Registration.

27. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Ordinance.

#### Renewal of Registration.

28. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

#### Procedure on Expiry of Period of Registration.

29. At the prescribed time before the expiration of the registration of a trade mark the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf, such conditions have not been duly complied with, the Registrar may remove such trade mark, from the register, subject to such conditions (if any), as to its restoration to the register as may be prescribed.

#### Status of Unrenewed Trade Marks.

30. Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no bona fide trade user of such mark during the two years immediately preceding such removal.

#### Correction and Rectification of the Register.

#### Correction of Register.

- 31. The Registrar may, on request made in writing by the registered proprietor or by some person entitled by law to act in his name:
  - (1) correct any error in the name or address of the registered proprietor of a trade mark; or
  - (2) enter any change in the name or address of the person who is registered as proprietor of a trade mark; or
  - (3) cancel the entry of a trade mark on the register; or
  - (4) strike out any goods or classes of goods from those for which a trade mark is registered; or
  - (5) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

#### Registration of Assignments.

32. Subject to the provisions of this Ordinance, where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Court.

#### Alteration of Registered Trade Mark.

33. The registered proprietor of any trade mark may apply in writing to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Court. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

#### Rectification of Register.

- 34. Subject to the provisions of this Ordinance,—
- (1) the Court may, on the application in writing of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit.
- (2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register;
- (3) in case of fraud in the registration or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section;
- (4) any order of the Court rectifying the register shall direct that the notice of the rectification shall be served upon the Registrar in the prescribed manner, who shall upon receipt of such notice rectify the register accordingly.

#### Non-user of Trade Mark.

35. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bona fide intention to use the same in connection with such goods, and that there has in fact been no bona fide user of the same in connection therewith, or on the ground that there has been no bona fide user of such trade mark in connection with such goods during the five years' immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

#### Effect of Registration.

#### Powers of Registered Proprietor.

- 36. Subject to the provisions of this Ordinance,—
- (1) the persons for the time being entered in the register as proprietor of

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a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment;

(2) any equities in respect of a trade mark may be enforced in like manner as in respect of any other property.

#### Rights of Proprietor of Trade Mark.

37. Subject to the provisions of section thirty-nine and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always, that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods, no rights of exclusive user of such trade mark shall, except so far as their respective rights shall have been defined by the Court, be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

#### Registration to be Prima Facie Evidence of Validity.

38. In all legal proceedings relating to a registered trade mark (including applications under section thirty-four), the fact that a person is registered as proprietor of such trade mark shall be *prima facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

#### Registration to be Conclusive after Seven Years.

39. In all legal proceedings relating to a registered trade mark (including applications under section thirty-four), the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Ordinance, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section ten hereof.

Provided that nothing in this Ordinance shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first mentioned trade mark by the proprietor thereof or his predecessors in business or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty of this Ordinance.

#### Unregistered Trade Mark.

40. No person shall be entitled to institute any proceedings to recover damages for the infringement of a trade mark not registered in the Colony.

#### Infringement.

41. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legtimately used in connection with such goods by other persons.

#### User of Name, Address, or Description of Goods.

42. No registration under this Ordinance shall interfere with any bona fide use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods.

#### "Passing off" Action.

43. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

#### LEGAL PROCEEDINGS.

#### Certificate of Validity.

44. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies, then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order of judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client unless in such subsequent proceeding the Court certifies that he ought not to have the same.

#### Registrar to Have Notice of Proceeding for Rectification.

45. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the procedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

#### Costs.

#### Costs of Proceedings Before Court.

46. In all proceedings before the Court under this Ordinance the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

#### EVIDENCE.

#### Mode of Giving Evidence.

47. In any proceedings under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right to do, the Registrar may (with the consent of the parties) take evidence viva voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken viva voce the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an official referee of the Supreme Court in England.

#### Sealed Copies To Be Evidence.

48. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar under his seal, shall be admitted in evidence in all Courts and in all proceedings without further proof or production of the originals.

#### Certificate of Registrar To Be Evidence.

49. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing, which he is authorised by this Ordinance to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Powers and Duties of Registrar of Trade Marks.

#### Exercise of Discretionary Power by Registrar.

50. Where any discretionary or other power is given to the Registrar by this Ordinance or by any Ru'es made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

#### Recognition of Agents.

51. When by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may, under and in accordance with rules made under this Ordinance, be done by or to an agent of such party duly authorized in the prescribed manner.

#### RULES.

#### Power of Governor-in-Council to Make Rules.

- 52. Subject to the provisions of this Ordinance the Governor-in-Council may make such rules, prescribe such forms, and generally do such things as he thinks expedient,—
  - (a) for regulating the practice under this Ordinance;
  - (b) for classifying goods for the purposes of registration of trade marks;
  - (c) for making or requiring duplicates of trade marks and other documents:
  - (d) for securing and regulating the publishing and selling or distributing, in such manner as the Governor-in-Council thinks fit, of copies of trade marks and other documents;
  - (e) generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

#### FEES.

53. There shall be paid in respect of applications and registration and other matters under this Ordinance such fees as may be prescribed and notified by the Governor-in-Council.

#### SPECIAL TRADE MARKS.

#### Standardization Trade Marks.

54. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Governor-in-Council may, if he shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Governor-in-Council.

#### OFFENCES.

#### Falsification of Entries in Register.

55. If any person makes or causes to be made a false entry in the register kept under this Ordinance or a writing falsely purporting to be a copy of any entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such entry or writing, knowing the same to be false, he shall be guilty of a misdemeanor.

# Penalty on Falsely Representing a Trade Mark as Registered.

- 56.—(1) Any person who represents a trade mark as registered in British Guiana which is not so registered shall be liable for every offence, on summary conviction, to a fine not exceeding fifty do'lars.
- (2) A person shall be deemed, for the purposes of this Ordinance, to represent that a trade mark is registered in British Guiana, if he uses in connection with the trade mark the words "registered in British Guiana," or any words expressing or implying that registration has been obtained in British Guiana for the trade mark.

#### ROYAL ARMS.

# Unauthorised Assumption of Royal Arms.

57. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person, without the authority of His Majesty or a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies to His Majesty or to such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or who is authorised by the Governor to take proceedings in that behalf, be restrained by injunction from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

# Amendment of Sec. 2, Ord. 2 of 1888.

58. Section two of the Merchandise Marks Ordinance, 1888, is hereby amended as follows:

"The definition of 'Trade Mark' shall be read and construed as if the definition of Trade Mark in this Ordinance were inserted in lieu thereof."

Repeal No. 16 of 1912.

59. The Merchandise Marks Ordinance, 1888, Amendment Ordinance, 1912, is hereby repealed.

# United States Practice.

# Trade Marks.

215 O. G., 977.

Court of Appeals of the District of Columbia.

ELECTRO STEEL COMPANY, SUCCESSOR OF HAMMACHER DELIUS & Co., v. LINDENBERG STEEL COMPANY.

# Decided March 1, 1915.

I. TRADE MARKS—"ELECTRO"—DESCRIPTIVE.

The word "Electro" as applied to steel produced in an electric furnace, *Held* to be descriptive and not capable of exclusive appropriation as a trade mark

2. SAME—CANCELLATION—SHOWING OF INJURY REQUIRED BY APPLICANT.

Where applicant used the word "Electro" in its advertisements and letters and also as the name of a steel it was selling and which buyers bought as such, *Held* that it is not essential in all cases that applicant should have had a strictly trade mark use of the word in order to deem itself injured by the registration of the mark.

Mr. Grafton L. McGill for the appellant.

Mr. Perry B. Turpin for the appellee.

#### SHEPARD, C. J.:

This is an appeal from the decision of the Commissioner of Patents canceling the registration of a trade mark.

August 27, 1907, Hammacher Delius & Co. registered the word "Electro" as a trade mark for steel.

The Lindenberg Steel Company applied for the cancellation of this registration August 8, 1912.

The Lindenberg Steel Company alleged in its application for cancellation that it and its predecessors in business have, since the year 1902 been engaged in the business of selling steel in billets, bars, tubing, sheets, plates, disks and forgings consisting of electro tool-steel, high-speed steel, nickel-chrome steel, nickel steel, chrome steel, magnet and silicon steel largely the product of the steel works of Richard Lindenberg, of Remscheid-Hasten, Germany.

Since the introduction of the electric furnace in about 1902, the said works has been engaged in the manufacture of steel by this method, that is, the manufacture of "Electro" steel. During this period petitioner has been selling as agent for said steel-works so called "Electro" steel continuously and extensively. The word "Electro" has been registered by Hammacher Delius & Co. for use

in connection with steel in bars, billets, and ingots, and is alleged to have been used as a trade mark in this business since 1904. Petitioner has used the expression "Electro" not as a trade mark but as an adjective to designate steel of a certain kind, that is, steel produced in an electric furnace, and therefore steel which is manufactured and sold by a large number of people engaged in that industry. The alleged trade mark of the registrants consisting of the word "Electro" is descriptive of the goods with which it is used and not capable of exclusive appropriation.

The goods with which it is used are of the same descriptive properties and are in fact identical with those with which petitioner has used the descriptive expression "Electro" in business, having extensively advertised its ware by means of the term "Electro."

Petitioner's purchasing trade and the public in general have come to recognize "Electro" steel as manufactured in the electric furnace and that steel is ordered and specified by the purchasing public in that manner. Should registrants be permitted to retain their registration they would be in a position to prevent others from applying said mark to steel manufactured in the electric furnace and would be in a position to institute expensive and troublesome litigation basing their suits upon said registration and attacking both the petitioner's purchasing trade as well as the purchasing public in general, and they would be in a position to threaten and intimidate the purchasing public. In this way the business of petitioner would be seriously and permanently damaged; its sales of "Electro" steel would necessarily fall off, and the purchasing public would be at a loss how to identify or designate the steel manufactured in the electric furnace, without circumlocution, if they wished to purchase such steel from other than registrants and the trade and business of petitioner would be seriously injured were the registrants to be allowed to retain their registration of the word "Electro."

The Electro Steel Company, successor to Hammacher Delius & Co., answered, denying that "Electro" is descriptive when used in connection with steel, and that irrespective of any meaning it may have come to possess at the time of registration it was a trade-mark denoting origin.

Replication having been filed, proofs were taken by both parties.

The Examiner of Interferences decided that the trade mark should be canceled and this decision was affirmed on appeal to the Commissioner.

We agree with the tribunals of the Patent Office that "Electro" as applied to steel is descriptive. To a purchaser of steel or to one familiar with the steel industry it would undoubtedly convey the impression that the steel to which it is applied is the product of an electrical furnace. The proof taken shows this to be true. Furthermore, it appears from publications in scientific journals prior to the registration, several of which are cited in the decision of the Examiner of Interferences, that "electro" is a common adjective meaning "pertaining to electricity." It has long been the combining form for "electric" and is universally recognized as synonymous therewith. Words illustrating this are numerous and well known, e. g. "electro-plate," "electro-magnet" "electro-metallurgy," "electro-chemistry," and others that might be mentioned. Electric was certainly common property as descriptive of steel at the time of the registration and "Electro" as a trade mark or as a description of Co. v. Menefee, 144 S. W., 869.

It remains to consider whether the Lindenberg Steel Company has such an interest in the subject-matter as entitles it to claim cancellation of the trade-

mark "Electro" notwithstanding its descriptive nature. It is contended that the petitioner fails to show that it has ever affixed on its goods the word "Electro" as a trade mark or as a description of the goods, and has had consequently no such use of the word as would give it standing in this proceeding.

It is quite true that to have a right to cancel or oppose the registration of a trade mark is dependent upon a showing of interest. (McIlhenny Sons Co. v. New Iberia Tabasco Pepper Co., 30 App. D. C., 337, 339; 133 O. G., 995; 1908, C. D., 325.)

It is not essential in all cases, however, that there should have been a strictly trade mark use of the words by complainant. Injury to its business might be otherwise shown. (Natural Food Company v. Williams, 30 App. D. C., 348, 350; 133 O. G., 232; 1908, C. D., 320.) The trade-mark involved in that case was "Shredded Whole Wheat," and it was said (p. 350):

The evidence above briefly reviewed, we think, clearly estab'ishes the fact that appellant was not the exclusive user of these words during the ten years' period. No claim is made of any attempt on the part of Williams to deceive the public, or that, the product of his machine is not in fact as much entitled to be called shredded whole wheat as is the product of appellant's machines. That he did not use the words as a trade mark, but merely in a descriptive sense, is of no moment. He, in common with all other manufacturers of shredded whole wheat, had the same right to properly designate their product as did the Natural Food Company.

See also H. W. Johns-Manville Co. v. American Steam Packing Company, (33 App. D. C., 224, 226; 145 O. G., 257; 1909, C. D., 425). In that case the word "Asbestos" was involved. It was shown that the American Steam Packing Company and its predecessors for about thirty-five years before the filing of the application had continuously used the word "Asbestos" to designate engine and machinery packing sold by it. In considering the right to oppose the Court said (p. 226):

It is also insisted by appellant that the opposer has no standing in this case, since it appears from the agreed statement of facts that the English word "asbestos" had not been used by appellee as a trade-mark, but merely to designate engine and machinery packing made and sold by it. This, however, we think is a sufficient use of the word "asbestos" to prevent the registration of appellant's mark under the ten years' clause of the Trade Mark Act, since the predominating characteristic of appelant's mark is the same word, merely in embellished letters, as the word used by appellee to designate its goods.

In the present case the Lindenberg Steel Company used the word "Electro" as the name of the steel it was selling and also in its advertisements and letters. The proof shows that this company sells electric steel as electro steel and so represents it to purchasers through its selling agents, and buyers buy it as such. Orders by purchasers were shown in evidence calling for electro steel. It is also shown that the respondent has notified the trade that any other person than itself offering electro steel would be liable for appropriation of its trade mark "Electro." It evidently intended as far as possible to establish a monopoly and to restrain the business of rival dealers which would undoubtedly be an injury to the comp'ainant. The complainant was engaged in selling the steel product of electric furnaces under the properly descriptive name of electro steel. Its

business was extensive and would necessarily have suffered if this unfounded claim of the trade mark should be upheld.

The decision appealed from is affirmed. This decision will be certified by the clerk to the Commissioner of Patents as required by law.

Affirmed.

# Adjudicated Patents.

No. 837,017. Welsbach. Pyrophoric alloy. Construed and held in pioneer patent, entitled to a liberal range of equivalents, and infringed. 219 F. R., 210.

No. 863,120. Victor. Washing-machine. Held not infringed. 219 F. R., 247. No. 942,932. Robinson. Vegetable-paring machine. Held void for lack of invention. 219 F. R., 225.

No. 947.546. Hohlfeld. Settee-hammock. Held not infringed. 219 F. R., 207. No. 953,334. Hodges. Method of operating compressed air engines. Held void for lack of invention. 219 F. R., 226.

No. 1,111,219. Daugherty. Barrel-jack. Held infringed on application for a preliminary injunction. 219 F. R., 219.

No. 666,711. Stauf. Method of desiccating milk. Held valid and infringed. 219 F. R., 572.

No. 862,830. Lewis. Sewing-machine. Held not infringed. 219 F. R., 557. No. 656,062. Van Kannel. Revolving door. Held valid and infringed. 219 F. R., 741.

No. 717,641. Vose. Weather-strip. Held not infringed. 219 F. R., 747. No. 794,296. Gille. Electric display-lamp. Held not infringed. 219 F. R., 750.

# Advertisements

#### Translations

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# WM. WALLACE WHITE, Proprietor and Publisher

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# Patent and Trade Mark Review

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WM. WALLACE WHITE,

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Patents and Trade-Marks,

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# Finland—Russia.

# Patents. Taxes. Alien Enemies. Order of Imperial Russian Senate.

We are indebted to the Helsingin Patenttitoimisto, of Helsinki, for advices that the "Teollisuushallitus-Industyrelsen" (Patent Office) of Finland has received an order from the Imperial Senate to accept no taxes due for patents owned by subjects of any of the powers that are at war with Russia.

# Greece.

# Trade Marks. Renewal. War Measures. Law No. 558 (1915).

We are indebted to Dr. C. S. Socolis of Athens for advices that "by virtue of Law No. 558 (1915) depositors in Greece of marks of manufacture and of commerce of the belligerant States may proceed to the renewal of their marks without conforming to the provisions of the general trade-mark law. It suffices to present to the competent authority the proof of the payment of the fees and taxes."

"The other documents may be filed after the conclusion of the war."

# Fraudulent "Touting" Circulars.

# Patent. Agents. Circularization. Repressive Measures.

The Chartered Institute of Patent Agents, Staple Hill Buildings, London, W. C., in view of the various fraudulent touting-circulars that are being despatched from Great Britain to holders of United States patent rights on the part of unregistered persons, is making request that all circulars of such nature, with envelope wherein received, and date, be sent to the Secretary of the Institute.

For the convenience of such persons as so desire, any matter of this character may be addressed to the Patent and Trade Mark Review, which, in turn, will forward it to the Institute.

# Belgium.

Patents. Applications. Priority. Convention. Extension of Terms Under German Authority. Notice of June 23, 1915.

(Translation.)

We are indebted to Mr. G. Van der Haeghen, of Masstricht, for advices that in No. 90 of the *Official Journal* of the part occupied of Belgium there was published a notice, whereof we give the translation following:

"The terms of priority provided by Art. 4 of the Convention of the Union of Paris, revised June 2, 1911, concerning the protection of industrial property (Moniteur belge of Aug. 6, 1914) are prolonged until new order, save terms that have expired before July 31, 1914."

Brussels, June 29, 1915.

The Governor General in Belgium,
(Signed) Freiherr von Bissing.

# France—United States.

#### Working. Suspension of Terms. Reciprocity. Official Interpretation.\*

(Translation.)

The International Bureau, for the enlightenment of inquirers, made inquiry of the French Administration of Industral Property (Query No. 139) as to whether, "the legislation of the United States, not recognizing the obligation to work patented inventions, it might be admitted that American citizens that possess patents in France could avail themselves, notwithstanding, of the suspension of working terms provided by decree of Aug. 14, 1914."†

The reply of the French Administration (La Propriété Industrielle, Aug., 1915). translated, is as follows:

"The interpretation of laws and decrees pertains in France exclusively to the courts. However, for countries such as the United States, where legislation imposes no obligation to work patents of invention, it would not appear doubtful that the condition of reciprocity, required by the laws of May 27, 1915,†† is naturally found fulfilled without there being need of any special act, and, consequently, citizens of the United States shall ipso facto continue to benefit in France by the suspension of working terms provided by the decree of Aug. 14, 1914."

# Denmark.

# Patents. Designs. Trade Marks. "War Measures." Decrees of the Ministry of Commerce of June 2, 1915.

(Translation.)

(a) Notification Relating to the Temporary Prolongation of Certain TERMS FIXED BY THE PATENT LAW OF APRIL 13, 1801.

In conformity with the authorization conferred by the patent law No. 201 of September 10, 1914 (for translation of which see 13 P. & T. M. Rev., 68), January 1, 1916, is hereby determined upon as the date that, in consequence of the notification of the Ministry of Commerce of September 11, 1914 (for translation of which see 13 P. & T. M. Rev., 68), constitutes the limit of the terms and prolongations of terms mentioned therein.

(b) Notification Relating to the temporary Prolongation of Certain TERMS FIXED BY THE LAW RELATING TO THE PROTECTION OF TRADE MARKS OF APRIL 11, 1800, AND BY THE LAW RELATING TO THE PROTECTION OF DESIGNS OF APRIL 1, 1905.

In conformity with the authorization conferred by the law No. 201 of September 10, 1914 (for translation of which see 13 P. & T. M. Rev., 68), January 1. 1916, is hereby determined upon as the date until which the payments for the renewal of protection of trade marks and designs mentioned in the notification of the Ministry of Commerce No. 209 of September 11, 1914 (for translation of which see 13 P. & T. M. Rev., 69), must be paid at the latest.

The Ministry of Commerce, June 2, 1915.

(From Blatt für Patent-. Muster- und Zeichenwesen, August 25, 1915.)

<sup>\*</sup> See also 13 P. & T. M. Rev., 268. † For translation of this decree see 13 P. & T. M. Rev., 296. † For translation of this decree see 12 P. & T. M. Rev., 357.

# Great Britain.

# Patents. Designs. Detrimental to Public Safety. Applications. Regulation. Order in Council of Oct. 14, 1915.

[Extract from Order in Council of 14th October, 1915.]
At the Court at Buckingham Palace, the 14th day of October, 1915.

Present,

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas by an Order in Council, dated the twenty-eighth day of November, nineteen hundred and fourteen, His Majesty was pleased to make Regulations (called the Defence of the Realm [Consolidation] Regulations, 1914) under the Defence of the Realm Consolidation Act, 1914, for securing the public safety and the defence of the Realm:

And whereas the said Act has been amended by the Defence of the Realm (Amendment) Act, 1915, the Defence of the Realm (Amendment) No. 2, Act, 1915, and the Munitions of War Act, 1915:

And whereas the said Regulations have been amended by Orders in Council, dated the twenty-third day of March, the thirteenth day of April, the twenty-ninth day of April, the second day of June, the tenth day of June, the sixth day of July, the twenty-eighth day of July, and the twenty-fourth day of September, nineteen hundred and fifteen:

And whereas it is expedient further to amend the said Regulations in manner hereinafter appearing:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, that the following amendments be made in the said Regulations:

- 2. After Regulation 18a the following Regulation shall be inserted:
- 18b. (1) Where an application has been made, whether before or after the date of the making of this Order, for the grant of a Patent or the registration of a design in the United Kingdom, and the Comptroller-General of Patents, Designs, and Trade Marks is satisfied that the publication of the invention or design might be detrimental to the public safety or the defence of the Realm, or might otherwise assist the enemy or endanger the successful prosecution of the war, he may delay the acceptance of the complete Specification filed with the application for the Patent, or, as the case may be, the registration of the design, and in such case may by Order prohibit—
  - (a) The publication or communication in any way of the invention or design;
  - (b) Application being made for the protection of the invention or design in any enemy or neutral country; and
  - (c) Application being made for the protection of the invention or design in any allied country or in any of His Majesty's Dominions without the permission of the Admiralty and Army Council.
- (2) No person shall apply for the grant of a Patent in respect of any invention or the registration of a design in any foreign country, or in any of His Majesty's Dominions, unless he has left at, or sent by post to the Patent Office, a notice of his intention, together with a Provisional Specification describing the nature of the invention or, as the case may be, a representation or specimen of the design, nor until after the expiration of one month from the time when such

notice was given, and if during the said month the Comptroller-General is satisfied that the publication of the invention or design might be detrimental to the public safety or the defence of the Realm, or otherwise assist the enemy or endanger the successful prosecution of the war, he may make a like Order as in respect of cases in which application is made for the grant of a Patent or the registration of a design in the United Kingdom.

- (3) Before exercising any of his powers under this Regulation as respects any matter the Comptroller-General shall consult with the Admiralty and Army Council and shall not act except upon the request of the Admiralty or Army Council.
- (4) If any person contravenes the provisions of this Regulation, or of any Order made thereunder, he shall be guilty of an offence against these Regulations.

(Signed) ALMERIC FITZROY.

[From The Illustrated Official Journal (Patents), No. 1392, of Sept. 22, 1915.]

# Germany.

Patents. American Holders. Taxes. War Measures. Note Verbale of Aug. 31, 1915.

(Translation.)

123444.

In supplement to its *Note Verbale* of December 14, 1914,\* No. II M. 5095, the Foriegn Office has the honor to communicate the following information to the Embassy of the United States of America:

By virtue of the Bundesrat degrees of September 10, 1914, (Reichsgesetzblatt, page 403), and of March 31, 1915, (Reichsgesetzblatt, page 212), the president of the Imperial Patent Office is in a position to permit deferment of payment in the cases provided, upon application therefor, of the annual dues chargeable according to section 8, paragraph 2, of the patent law for not more than nine months after the beginning of the current patent year, and to waive the additional charge (ibid. section 8, paragraph 3). He may permit further deferment of payment of dues already in abeyance to date from the period of the first deferment. As long as these decrees are in force, the president will make use of this authority in favor of citizens of the United States of America upon their application, unless particularly important reasons stand in the way of so doing in individual cases.

The Imperial consulate-general at New York and the Imperial consulates at Atlanta, Chicago, Cincinnati, Denver, New Orleans, Philadelphia, San Francisco, Seattle, St. Louis and St. Paul will be informed in the above sense and instructed at the same time, when accepting payments of patent dues to take the application for deferred payment in all cases where it may be made.

Berlin, August 31, 1915.

To the American Embassy, Berlin.

(From 219 O. G., 932.)

<sup>\*</sup> See 13 P. & T. M. Rev., 144.

# Industrial Property. Rights. Alien Enemies. Decree of July 1, 1915. (Translation.)

The Federal Council, on the ground of Section 3 of the law authorizing the Federal Council to take economical measures, etc., of August 4, 1914, (notice of which see 13 P. & T. M. Rev., 7) has issued by way of reciprocity the following decree:

I. Patent rights, Gebrauchsmuster rights, and Trade Mark rights, may, in so far as citizens of enemy countries are entitled thereto, be restricted and annulled in the public interest. Rights of exploitation and utilization, in particular, may be granted to others.

Retroactive force may be given these orders. They may be modified and withdrawn at any time.

- 2. Patents are not granted and Gebrauchsmuster or Trade Marks are not registered upon application from citizens of enemy countries. The Patent Office, in so far as citizens of enemy countries are concerned may suspend official actions imposed upon it according to legal provisions, and discontinue for the time being the proceedings; the President of the Patent Office may issue regulations with regard thereto.
- 3. The application of this decree shall not be excepted by the fact that the rights have been assigned to citizens of other countries subsequently to July 31, 1914, or that citizens of other countries have been put forward in order to conceal the legal status.
- 4. Citizens of enemy colonies and foreign possessions, persons who are domiciled or have their establishments in the territories of the countries or colonies thereof, and also legally constituted persons, companies and enterprises, being either domiciled in the specified territories or conducted or supervised therefrom, or the proceeds of which are wholly or in part to be transmitted thereto, shall be placed on an equal footing with the citizens of enemy countries.

Great Britain, France and Russia are enemy countries within the terms of this decree.

6. The operation of patents to which subjects of Russia are entitled shall be considered as having become extinct commencing from the eleventh day of March, 1915, without prejudice to the exclusive rights of exploitation and utilization secured by citizens of countries other than enemy countries. Rights of the kind mentioned shall be communicated to the Patent Office and be published in the *Reichsanzeiger*; the operation of the right shall cease, if it be not brought to the notice of the Patent Office, at the latest, on September 30, 1915. The Empire is entitled to demand compensation agreed upon for the grant of the right; the payments shall be made at the Treasury of the Patent Office.

The operation of the rights secured by subjects of Russia for the exploitation and utilization of patents shall be considered as lapsed commencing from March 11, 1915.

No rights can be based, on behalf of Russian subjects, on patent applications that were filed subsequently to March 11, 1915.

These provisions (sections 1 to 3) shall be correspondingly applied to Gebrauchsmuster.

7. The Imperial Chancellor will issue the regulations required for

carrying into effect this decree; he may assign to another authority the authorization designated in section 1.

The Imperial Chancellor may, by way of reciprocity, declare this decree to be applicable wholly or in part to citizens of countries other than those designated in section 5.

8. This decree comes into force on the day of its announcement. The Imperial Chancellor shall decide when and to what extent this decree shall cease to be in force.

Berlin, July 1, 1915. (Published in Reichs-Gesetzblatt, No. 85, p. 414-415.)

# "Soleau Method."

# Designs. Models. France. International Union. Experiment.

In view of the efforts of late put forward by commercial interests in the United States (see 13 P. & T. M. Rev., 380, and references there noted), and in other countries for the protection of designs, it will be of interest to note the steps being taken by France to safeguard the designs and models produced by her artisans (see 12 P. & T. M. Rev., 2929, vol. 12, pp. 298, 299), and in particular in concert with the International Bureau at Berne (see 14 P. & T. M. Rev., 5, 6). The system used as a basis is known as the "Soleau Method," depending primarily on priority of registration, which priority is evidenced by duplicate copies of the respective design or model, contained each in a compartment of a double envelope, which, after identical markings of each compartment for future identification, shall be separated, one being returned to the sender, the other retained by the National Office, or rather, under the most recent regulation, by the International Bureau at Berne.

In a recent article on "Protection of Designs and Models, Application of the 'Soleau Method,'" in La Propriété Industrielle of August of the present year, the progressive steps leading up to the present system are studied in detail. The beginning of regulation in such matters is actually the year 1806. As a matter of fact there was at that time a law—that of July 19-24, 1793—on which a certain dependence was placed. It concerned, however, only real works of art, and, as such, was of mooted value for the protection of industrial designs or models. In consequence of this lack of protection, on the occasion of the visit of Napoleon to the city of Lyon, the manufacturers of the city secured from him the creation of a law-March 18, 1806-whose Art. 15 provided that any manufacturer might claim before the Tribunal of Commerce the ownership of a design of his own invention by means of a deposit in the archives of a Council of Experts. It was limited, however, to the protection of industries of this one city, to-wit: silks. There was provision in Arts. 34 and 35 for the further extension of such protection, in that they stipulated that a Council of Experts might be constituted, by regulation of public administration, in manufacturing cities whenever the Government might deem it proper; while the attributes of these Councils should be the same, their composition might be different-according to the locality. The law contained. however, a serious hiatus in that those manufacturers whose establishments were not situated within the jurisdiction of one of the Councils of Experts were deprived of the advantages of the law. This objection was overcome by Ordinance of Aug. 17, 1825, by whose provisions designs were to be received, for all manufactures situated without the domain of a Council of Experts, on the rolls of



the Tribunal of Commerce or other Civil Tribunals charged with the jurisdiction of Tribunals of Commerce.

The letter of the law would indicate that it applied to designs only, and not to models, in as much as it provided for the deposit of a sample (echantillon) of the article itself, "folded under envelope," and not for a reproduction of same. In other words, the law was drawn up to protect a very limited class of goods, silks, in the first place. However, the Councils of Experts, relying on a certain latitude in their powers, made liberal interpretation wherever possible, so that—crystallized by the Decree of June 5, 1861—French jurisprudence finally accepted the law as applicable to models employed in industry.

In practice, there were two serious criticisms: (1) The law protected the manufacturer, and not the creative artisan of the design or model; and (2) it left doubt as to whether artistic creations pertaining to industry became thereby industrial designs or models whereof ownership might only be assured through prior deposit, or whether they might be protected as works of art, independently of deposit, or by means of a deposit which it sufficed to effect at the moment of bringing action for piracy.

Much confusion necessarily followed, particularly in the bronze industry. A most serious difficulty arose as to whether certain designs or models pertained to pure or applied art, and many measures were proposed to correct this. In the meantime, models and designs without number were being wrongfully appropriated, seemingly without recourse. It remained for the present century to correct this abuse, and credit must be given to Mr. E. Soleau, President of the Syndical Chamber of Bronze Manufacturers for the method that now bears his name: the "Soleau Method." Through his efforts Art. 1 of the Law of 1793, which only expressly mentioned writers, musical composers, painters and draughtsmen, among artists entitled to enjoy the exclusive right to their works, by the Law of March II, 1902, extended like protection to architects and sculptors, and in addition to "sculptors and designers of ornament, whatever be the merit or purpose of their work"-intended, evidently, for the bronze, ornamental jewelry, and like industries. However, meritorious as this addition may have been, it was found to be deficient as to many other deserving interests. This deficiency was left to be remedied by the Law of July 14, 1909, concerning designs and models (reference cited supra), which at last has put all industries on a like, normal basis.

The Law of July 14, 1909, protects not only the manufacturer, but as well any creator of a design or model, and his assigns. They have the exclusive right of exploiting or selling it, subject to conditions provided by law. The definition of what constitutes the subject-matter of a design or model is exceedingly broad and comprehensive, covering practically everything that might be so considered, to the detriment of no industry.

It will be seen, through all this effort and legislation, that deposit gives presumption of priority, and to carry out this idea the Decree of March 10, 1914, and accompanying Order of March 13, 1914, (references cited supra) were issued. In noting the provisions of these regulations, we quote as follows from La Propriété Industrielle:

"This proof 'by perforation' of the possession of a design or model on a determined date—a possession that presumes the creation for so long a time that no other person can prove that he has possessed it on a prior date—is accomplished by means of a special envelope, invented by Mr. Soleau. This envelope is constructed of two separable parts, in each of which is placed a copy of the

design or a representation of the model. This combined envelope is sent, along with the prescribed tax, to the National Office of Industrial Property at Paris. This latter, by means of a special machine, inscribes by means of perforation the date of reception and the serial number of the inscription effected, separates the two envelopes, returns one of them to the sender, and places the other in its archives. According to the terms of the Order of March 13, 1914, the sender may justify in France his priority of possession by means of the envelope that he has received in return, or by the duplicate remaining at the Office."

The "Soleau Method" gathered support from its inception, and through the efforts of certain organizations of France, including the Chamber of Commerce of Paris—convinced of its advantages in the international field—the French Administration made arrangements with the International Bureau at Berne for a like service for the verification of priority of international designs and models—this to be without expense to the latter, and subject to discontinuance by either party, the French Administration at will, and the International Bureau on six months' notice. In other words it is an experiment.

The article in La Propriété Industrielle questions as to whether the expected advantages of this International registration will result, without further diplomatic arrangement. Under the present system (Washington Conference, Art. 4) the certification of any one of the individual States forming the Union is accepted, presumptively, as proof without authentication, wherefrom it would seem that a priority, according to the "Soleau Method," might be evidenced by the French National Administration as well as by the International Bureau at Berne. There is, however, a real advantage that must accrue—and earnest of International uniformity. If the system works to advantage in the domain where it is now being tried, it will undoubtedly suggest like reforms elsewhere. And with this uniformity, there must be taken into account simplicity of registration and proof, and a minimum of expense.

# Canada.

Proprietary Medicines. Perfumery. Wines. Stamp Tax. The Special Revenue Act, 1915, of March 27, 1915.

AN ACT TO SUPPLEMENT THE REVENUE REQUIRED TO MEET WAR EXPENDITURES.

(AS FAR AS IT RELATES TO PROPRIETARY MEDICINES, ETC.)

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title.

1. This Act may be cited as The Special War Revenue Act, 1915.

#### PART III.

#### Commencement of Part.

10. This Part, except as herein otherwise provided,\* shall come into force on the fifteenth day of April, 1915.

#### Definition, "Minister."

11. In this Part, unless the context otherwise requires,—"Minister" means the Minister of Inland Revenue.

<sup>\*</sup> See Art. 19, par. 8, following.

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#### STAMP DUTIES ON ARTICLES IN BOTTLES AND PACKAGES.

#### Definitions.

14. In this section and in the remaining sections of this Part, unless the context otherwise requires,—

# "Consumer."

- (i) "consumer" means a person who uses
  - (a) a proprietary or patent medicine,
  - (b) perfumery,
  - (c) wine of the grape, non-sparkling, or
  - (d) champagne or sparkling wine,

# "Selling to a Consumer."

either in serving his own wants or in producing therefrom any other article of value; and "selling to a consumer" includes selling by retail;

# "Package."

(ii) "package" includes carton, packet, box, pot, cask of wood or other material, or other first receptacle or covering;

#### "Perfumery"

(iii) "perfumery" includes alcoholic and non-alcoholic perfumes and perfumed spirits, bay rum, cologne and lavender waters, hair oil, tooth and other powders and washes, pomatums, pastes and all other preparations used for the hair mouth, or skin;

# "Proprietary or Patent Medicine."

(iv) "proprietary or patent medicine" includes pills, powders, tinctures, troches, or lozenges, syrups, cordials, bitters, anodynes, tonics, plasters, liniments, salves, ointments, pastes, drops, waters (except mineral waters in their natural state or carbonized), essences, oils, and all other medicinal preparations or compositions bottled or packed ready for sale in respect of which the person making or preparing the same has or claims to have any formula or secret or occult art for the making or preparing thereof, or has or claims to have any exclusive right or title to such making or preparing, or which are prepared or made under any letters patent or which are designated by a trade mark or which if prepared in accordance with any formula published or unpublished are recommended to the public by the makers, vendors or proprietors thereof as remedies or specifics for any disease or affection whatsoever affecting the human or animal body, but does not include any medicinal preparation or composition recognized by the British or the United States pharmacopæia or the French codex as officinal.

# Stamp Tax on Patent Medicines, Perfumery and Wines.

- (15) Every person selling to a consumer any bottle or package containing
  - (a) a proprietary or patent medicine,
  - (b) perfumery,
  - (c) wine of the grape, non-sparkling, or
  - (d) champagne or sparkling wine,

shall, at or before the time of sale, affix to every such bottle or package an adhesive stamp of the requisite value as mentioned in the Schedule to this Part.

- 2. Every importer of
  - (a) a proprietary or patent medicine,
  - (b) perfumery,
  - (c) wine of the grape, non sparkling, or
  - (d) champagne or sparkling wine,

who is a consumer, shall, while such articles after importation into Canada are in the custody of the proper customs officers, affix an adhesive stamp to the bottles or packages containing such articles of the requisite value as mentioned in the Schedule to this Part.

- 3. Every manufacturer or producer of
  - (a) a proprietary or patent medicine,
  - (b) perfumery,
  - (c) wine of the grape, non-sparkling, or
  - (d) champagne or sparkling wine,

who is a consumer, shall, under regulations made by the Minister, before using any such article in producing therefrom any other article of value, affix an adhesive stamp of the requisite value as mentioned in the Schedule to this Part to the bottle or package containing such article.

4. The person selling, the importer, and the manufacturer or producer whose duty it is to affix a stamp under this section, shall at the time the stamp is affixed cancel the same by writing on or across the stamp initials or other marks of identification, together with the date of such writing, or otherwise cancel the stamp in accordance with regulations made by the Minister.

#### Retail Price.

(16) The Minister may fix and determine, for the purposes of this Part, the retail price of a proprietary or patent medicine and of perfumery.

# Penalty for Neglect to Affix Stamp.

- (17) Every person required by this Part to affix an adhesive stamp to a bottle or package containing
  - (a) a proprietary or patent medicine,
  - (b) perfumery,
  - (c) wine of the grape, non-sparkling, or
  - (d) champagne or sparkling wine,

who fails or neglects to affix an adhesive stamp as required by this Part shall incur a penalty not less than fifty dollars and not exceeding two hundred and fifty dollars.

# Penalty for Neglect to Cancel Stamp.

(18) Every person required by this Part to cancel a stamp affixed to a bottle or package in the manner prescribed by or under the provisions of this Part who fails or neglects so to do shall incur a penalty not less than fifty dollars and not exceeding two hundred and fifty dollars.

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#### STAMP DUTIES, GENERAL.

# Stamps To Be Prepared.

#### Proceeds.

(19) The Minister, except as herein otherwise provided, may direct stamps to be prepared for the purposes of this Part of such kinds and bearing respectively such devices as he thinks proper, and all sums received for stamps and paper stamped by means of a die under this Part shall form part of the Consolidated Revenue Fund.

#### Device.

2. The device on each stamp shall express the value thereof, that is to say the sum at which it shall be reckoned in discharge of the obligation to affix or impress stamps under this Part.

# Postage Stamps May Be Used.

3. Postage stamps of the requisite value may, in lieu of stamps prepared under subsection 1 of this section, be used in fulfilment and discharge of any requirement under this Part that adhesive stamps be affixed.

#### Cancellation.

4. In any case in which an adhesive stamp is required to be cancelled, and it is not otherwise specifically provided, such stamp shall be deemed to be cancelled if lines or marks are drawn across or impressed thereon so as to effectually render the stamp incapable of being used for any other instrument.

# Appointment of Stamp Vendors.

5. The Minister may appoint any collectors of Inland Revenue, postmasters or other officers of the Government or other persons to sell stamps prepared for the purposes of this Part.

#### Remuneration.

. 6. The Governor in Council, except as herein otherwise provided, may by regulation fix and determine the remuneration to be allowed to persons appointed to sell stamps prepared for the purposes of this Part.

#### Regulations.

7. The Minister, except as herein otherwise provided, may make such additional regulations as are deemed necessary for carrying out the provisions of this Part.

#### Date When Provisions Relating to Wine Commence.

8. The provisions of this Part, in so far as they relate to wine of the grape, non-sparkling, champagne and sparkling wine, shall be deemed to have come into force on the twelfth day of February, 1915.

#### GENERAL.

# Recovery of Taxes.

(20) All taxes or sums payable under this Act shall be recoverable at any time after the same ought to have been accounted for and paid, and all such

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taxes and sums shall be recoverable, and all rights of his Majesty hereunder enforced, with full costs of suit, as a debt due to or as a right enforceable by His Majesty, in the Exchequer Court or in any other court of competent jurisdiction.

# Recovery of Penalties.

- 2. Every penalty incurred for any violation of the provisions of this Act may be sued for and recovered
  - (a) before the Exchequer Court of Canada or any court of competent jurisdiction in the premises; or
  - (b) if the amount of such penalty does not exceed five hundred dollars, by summary conviction under The Summary Convictions Act.

#### Prosecutions.

3. All penalties imposed by this Act may be sued for, prosecuted and recovered with costs by His Majesty's Attorney General of Canada, or, in respect of penalties under Part One, in the name of the Minister of Finance, or, in respect of penalties under Part Two and Part Three, in the name of the Minister of Inland Revenue

# Application of Penalties.

4. The amount of all such penalties shall, except as herein otherwise provided, belong to His Majesty for the public uses of Canada and shall form part of the Consolidated Revenue Fund.

# Penalty Collected Under Part Three.

5. Any penalty collected and paid under Part Three may be divided with the person laying an information or otherwise aiding in effecting the conviction of the person accused, in such proportions as the Treasury Board in any case or class of cases directs and appoints.

Note: For lack of space the schedule to Part III is omitted.—Ed.

#### British Guiana.

Trade Marks. Rules. Effective June 1, 1915.

ORDINANCE 27 OF 1014.

#### TRADE MARK RULES.

By virtue of the provisions of the Trade Marks Ordinance, 1914,\* the Governor-in-Council doth hereby make the following Rules:

#### PRELIMINARY.

I. These Rules may be cited as the Trade Marks Rules, 1914, and they shall come into operation on the 1st day of June, 1915.

#### INTERPRETATION.

2. In the construction of these Rules any words herein used the meaning of which is defined in the Trade Marks Ordinance, 1914, shall have the meaning therein assigned to them.

"The Ordinance" shall mean the Trade Marks Ordinance, 1914.

"Agent" shall mean an agent duly authorised to the satisfaction of the Registrar.

"Old Mark" shall mean a trade mark which is registered in the United Kingdom as a mark which was used by the owner or his predecessors in business before the 13th August, 1875.

<sup>\*</sup> For text of ordinance referred to see 14 P. & T. M. Rev., 17, particularly Sec. 52.



#### FEES.

3. The fees to be paid in pursuance of the Ordinance shall be the fees specified in the First Schedule to these Rules. Such fees shall be paid by adhesive stamps to be affixed to the Register at such place as may be denoted therein and shall be cancelled by the Registrar.

#### FORMS.

4. The forms herein referred to are the forms contained in the Second Schedule to these Rules, and such forms shall be used in all cases to which they are applicable, and shall be modified as directed by the Registrar to meet other cases.

#### CLASSIFICATION OF GOODS.

5. For the purposes of trade marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

#### DOCUMENTS.

6. Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, papers having representations affixed, or other documents required by the Ordinance, or by these Rules to be left with or sent to the Registrar shall be upon foolscap paper of a size of approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

## Service of Documents.

7. Any application, statement, notice, or other document other than any document in any proceeding before the Court or a judge thereof, authorised or required to be left, made or given at the Office of the Registrar, or to or with the Registrar, or with or to any other person may be sent through the post by a registered prepaid or official-paid letter; any document so sent shall be deemed to have been delivered at the time when the letter containing the same would be delivered in the ordinary rourse of post, and in proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and registered. A letter addressed to a registered proprietor of a trade mark at his address as it appears on the register or address for service, or to any applicant for or person opposing the registration of a trade mark at the address appearing in the application or notice of opposition or given for service as hereinafter provided shall be deemed to be sufficiently addressed.

#### Address.

- 8. Where any person is by the Ordinance or these Rules bound to furnish the Registrar with an address the following provisions shall apply;
- (1) The address given shall in all cases be as full as possible, for the purpose of enabling any person easily to find the place of business of the person whose address is given.
- (2) When a person does not reside in a town with streets, the Registrar may require the address to include all indications which he thinks necessary for such purpose, so far as it can be obtained.
- (3) When an applicant resides in a town where there are streets, the address given shall include the name of the street, and the number in the street or name of premises, if any.



# Address for Service.

- 9. (1) Every applicant for the registration of any trade mark, and every opponent to such registration, and every agent, who does not reside or carry on business in British Guiana, shall, if so required, give an address for service in British Guiana, and such address may be treated as the actual address of such applicant, opponent, or agent for all purposes connected with such application for registration or the opposition thereto.
- (2) The Registrar may require the proprietor of a registered trade mark who does not reside or carry on business within British Guiana to give an address for service within British Guiana, and such address may be treated as the actual address of the proprietor for all purposes connected with such trade mark.

#### AGENTS.

10. An application for registration and an opposition to registration and all other communications between an applicant, an opponent and the Registrar, and between the proprietor of a registered trade mark and the Registrar, or any other person, may be made by or through an agent duly authorized in writing. In case any proprietor of a registered trade mark shall appoint such an agent, service upon such agent of any document relating to such trade mark shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of such trade mark may be addressed to such agent.

#### REGISTRABLE TRADE MARKS.

- 11. The Registrar may refuse to accept any application upon which the following appear:
  - (a) The word "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is forgery," or words to like effect.
  - (b) Representations of Their Majesties or of any member of the Royal Family.

#### Royal Arms.

12. Representations of the Royal Arms or Royal Crest, or arms or crests so nearly resembling them as to lead to mistake, or of the British Royal crowns, or of the British national flags, or the word Royal or any other words, letters or devices, calculated to lead persons to think that the applicant has Royal patronage or authorisation, may not appear on trade marks, the registration of which is applied for. Provided always that nothing contained in this Rule shall preclude the Registrar from allowing the registration as an "old mark," of any mark which was capable of being so registered before the Trade Mark Ordinance, 1914, came into operation.

# Arms of Foreign State.

13. Where representations of the arms of a foreign State or place appear on a mark, the Registrar may call for such justification as he may deem necessary for their use.

# Arms of Colony, City, etc.

14. Where a representation of the arms or emblems of any British Colony, city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent

from such official as the Registrar may consider entitled to give consent to the use of such arms or emblems.

# Representations of Living Persons or Persons Recently Dead.

15. Where the names or representations of living persons appear on a trade mark, the Registrar shall, if he so require, be furnished with consents from such persons before proceeding to register the mark. In the case of persons recently dead the Registrar may call for consents from their legal representatives before proceeding with registration of a trade mark on which their names or representations appear.

#### Name or Description of Goods.

- 16.—(1) Where the name or description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.
- (2) Where the name or description of any goods appears on a trade mark which name or description in use varies, the Registrar may permit the rgeistration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies.

#### APPLICATION FOR REGISTRATION.

- 17.—(1) Every application for the registration of a trade mark, shall be addressed to the Registrar in the Form No. 1 and shall be accompanied by three additional representations of the trade mark exactly corresponding to that affixed on Form No. 1 and also by a statutory declaration in the Form No. 2 or an affidavit to the same effect.
- (2) And in the case of a trade mark not falling within the descriptions in section 8 (1), (2), (3), or (4) of the Ordinance, there shall be added to such application a requirement that the same shall be referred to the Court for an order that the said trade mark may be deemed distinctive.
- (3) Such statutory declaration or affidavit must be made by the applicant in person subject to the provisions of Rule 86 (d) and (e).

#### Application for Old Mark.

18. In the case of an application for the registration of an old mark there shall be furnished a certificate of the registration of the mark in the United Kingdom, whereto shall be affixed a copy of the mark.

#### Application by Firm.

- 19.—(1) If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.
- (2) If the application be made by a body corporate it may be signed by a Director or by the Secretary or other principal officer of such body corporate.
  - (3) Any application may be signed by an agent, duly authorised in writing.

    Separate Applications.
- 20. Applications for the registration of the same trade mark in different classes\* shall be treated as separate and distinct applications and in all cases where a trade mark has been registered prior to the coming into operation of the

<sup>\*</sup> The classification corresponds to that of the British Trade Mark Act, 1905.

Ordinance for goods in more than one class the registration shall henceforth for the purpose of fees and otherwise be deemed to have been made on separate and distinct applications in respect of goods included in each class.

# Representations To Be Satisfactory.

21. The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

# Specimens of Trade Marks in Exceptional Cases.

- 22.—(1) Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.
- (2) The Registrar may also, in exceptional cases, receive and file in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

# Series of Trade Marks.

23. When application is made for the registration of a series of trade marks, under Section 25 of the Ordinance, a representation of each trade mark of the series shall be affixed to Form No. 1.

#### Transliteration and Translation.

24. When a trade mark contains a word or words in other than Roman characters or in a language other than English the Registrar may ask for an exact transliteration or translation thereof, and, if he so requires, such transliteration or translation shall be indorsed on the application, such indorsement being signed by the applicant or his agent.

# PROCEDURE ON RECEIPT OF APPLICATION.

# Acknowledgment of Application.

25. On or after receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

#### Search.

26. Upon receipt of an application for registration the Registrar shall cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical with the mark applied for or so nearly resembling it as to be calculated to deceive.

#### Acceptance.

27. If after such search and a consideration of the application the Registrar thinks there is no objection to the mark being registered, he may accept it absolutely or subject to conditions, amendments, and modifications which he shall communicate to the applicant in writing.

#### Objections.

28. If after such search and consideration of the application any objections appear, a statement of these objections shall be sent to the applicant in writing, and unless within three months the applicant applies for a hearing he shall be deemed to have withdrawn his application.

# Hearings.

29. If the Registrar accepts an application subject to any conditions, amendments, or modifications, and the applicant objects to such conditions, amendments, or modifications, the applicant shall within three months from the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, or modifications, he shall forthwith notify the Registrar in writing.

# Registrar to State Grounds of Decision on Request.

30. The decision of the Registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if the applicant objects to such decision he may within one month apply upon Form No. 3 requiring the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

#### Disclaimers.

31. The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be. An order of the Registrar under this rule shall be subject to appeal to the Court.

#### ADVERTISEMENT.

#### Advertisement of Application.

- 32.—(1) Every advertisement of application shall be forwarded by the applicant to the Registrar to be approved of and to be by him published once a month in the Gazette for a period of three months.
- (2) If no representation of the trade mark is inserted in connection with the advertisement of an application the applicant shall supply a detailed description of the trade mark and shall state in the advertisement that a representation of the trade mark is filed for inspection in the office of the Registrar.

#### Advertisement of Series.

33. When an application relates to a series of trade marks, under Section 25 of the Ordinance, the Registrar may, if he thinks fit, require that a statement of the manner in respect of which the several trade marks differ from one another, be inserted with the advertisement of the application.

#### OPPOSITION TO REGISTRATION.

#### Notice of Opposition.

34. Any person may within a period not exceeding three months from the date of the first advertisement of an application for registration of a trade mark give notice in writing to the Registrar of opposition to the registration. Such notice shall be in Form No. 4 and shall contain a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the Register, the number of such marks, and the numbers and dates of the Guzette in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the Registrar shall forthwith send to the applicant.

#### Counter-statement.

35. Within one month from the receipt of such duplicate the applicant shall send to the Registrar a counter-statement in Form No. 5 setting out the grounds

on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the notice of opposition he admits. Such counter-statement shall be accompanied by a duplicate which the Registrar shall forthwith send to the opponent.

# Evidence in Support of Opposition.

36. Within one month from the receipt of such duplicate the opponent shall forward to the Registrar such evidence by way of statutory declaration or affidavit as he may desire to adduce in support of his opposition. Such statutory declaration or affidavit shall be accompanied by a duplicate, which the Registral shall forthwith send to the applicant.

# Evidence in Reply by Opponent.

37. Within one month from the receipt of such duplicate the applicant shall forward to the Registrar such evidence by way of statutory declaration or affidavit as he desires to adduce in support of his application. Such statutory declaration or affidavit shall be accompanied by a duplicate, which the Registrar shall forthwith send to the opponent.

# Evidence in Reply by Opponent.

38. Within fourteen days from the receipt of such statutory declaration or affidavit the opponent may forward to the Registrar evidence by way of statutory declaration or affidavit in reply. Such evidence shall be confined strictly to matters in reply. Such statutory declaration or affidavit shall be accompanied by a duplicate, which the Registrar shall forthwith forward to the applicant.

#### Further Evidence.

39. In any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as the Registrar may think fit.

#### Exhibits.

40. Where there are exhibits to declarations or affidavits filed in an opposition, copies or impressions of such exhibits shall be sent to the other party on his request, or, if such copies or impressions cannot conveniently be furnished, the originals shall be sent to the Office, so that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

#### Hearing.

41. Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of such notice both parties shall file a notice in Form No. 6. A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on Form No. 6 that he intends to appear, may be treated as not desiring to be heard, and the Registrar may act accordingly.

#### Extension of Time.

42. Where in opposition proceedings any extension of time is granted to party a hearing, grant any reasonable extension of time to the other party in any party, the Registrar may thereafter, if he thinks fit, without giving the said which to take any subsequent step.

# Security for Costs.

43. Where a party giving notice of opposition neither resides nor carries on business in the Colony, the Registrar may call upon him to give security in such form as the Registrar may deem sufficient for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case.

#### Non-Completion.

# Non-completion Within Twelve Months.

44. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar shall give notice to the applicant or to his agent in writing of such non-completion. If after fourteen days from the date when such notice was sent the registration is not completed, the application shall be deemed to be abandoned, but the Registrar may with such notice, where the applicant lives at a distance, give a further time after such fourteen days, not to exceed two months, for the completion of such application.

# Refusal after Acceptance.

45. In cases where a mark has been accepted by error the Registrar need not register the mark but may withdraw his acceptance and refuse to register, but any such refusal shall be deemed to be a refusal under Sub-section 2 of Section 11 of the Ordinance, and an applicant shall have thereafter the same right of being heard, and of appealing, as he would have had if the mark had been refused immediately upon its receipt.

# Entry on the Register.

46. As soon as may be after the expiration of one week from the date of the last advertisement in the Gazette of any application, the Registrar shall, subject to any opposition and the determination thereof, and upon payment of the prescribed fee, enter the trade mark in the register. The entry of a trade mark on the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in Section 4 of the Ordinance, and such other particulars as the Registrar may deem necessary.

#### Associated Marks.

47. Where a mark is registered as associated with any other mark or marks the Registrar shall note upon the register in connection with such mark the numbers of the marks with which it is associated and shall also note upon the register in connection with each of the associated marks the number of the newly registered mark as being an associated mark with each of them.

# Death of Applicant Before Registration.

48. In case of the death of any applicant for a trade mark after the date of his application and before the trade mark applied for has been entered on the register, the Registrar, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address and description of the person owning the goodwill of the business, on such ownership being proved to the satisfaction of the Registrar.

# Certificate of Registration.

49. Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in the Form No. 7.

#### Assignment.

# Joint Request for Entry of Assignment.

50. The Registrar may on request made jointly by a registered proprietor of a mark and the person to whom he has assigned such mark, together with the goodwill of the business concerned in the goods for which it has been registered, register the assignee as proprietor of the mark. Such application shall be in the Form No. 8. If the Registrar so require, the assignee shall furnish a statutory declaration in Form No. 9 or an affidavit to the like effect.

# Request for Entry of Assignment by Subsequent Proprietor.

51. Where no such joint request is made, any person who has become entitled to a registered trade mark by assignment, transmission, or other operation of law, may request the Registrar to enter his name in the register as proprietor of such trade mark. The request shall be on Form No. 10, and such request shall contain the name, address, and description of the person claiming to be entitled to the trade mark, hereinafter called the claimant.

# Case Accompanying Request.

52. Together with such request the claimant shall forward a case stating full particulars of the assignment, transmission, or other operation of law by virtue of which he claims to be entitled to be entered in the register as proprietor of the trade mark, so as to show the manner in which and the person or persons to whom the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the goodwill of the business concerned in the goods for which the trade mark has been registered.

# Signature of Request.

53. Such request shall in the case of an individual be made and signed by the claimant, and in the case of a firm or partnership by one or more members of such firm or partnership, and in the case of a body corporate by a director or by the secretary or other principal officer of such body corporate.

#### Statutory Declaration in Support of Request.

54. Where the Registrar shall determine that the case sets out particulars such as entitle the claimant to be registered as proprietor of such trade mark, he may in his discretion call upon the claimant to furnish a statutory declaration in Form No. 11 or an affidavit to the like effect verifying the several statements in the case and declaring that the particulars given comprise every material fact and document affecting the proprietorship of the trade mark claimed by such request.

# Proof of Title.

55. In any case the Registrar may call on any person who desires to be registered as proprietor of a trade mark for such proof or additional proof of title and of the existence and ownership of such goodwill as aforesaid as the Registrar may require for his satisfaction.

Indorsement of Assignment on Certificate of Registration.

56. The Registrar shall, at the request of a person who has become entitled

to a registered trade mark by assignment, transmission, or other operation of law, made upon Form No. 12, indorse upon the original certificate of registration a statement of the alteration in the proprietorship of the mark.

#### RENEWAL.

#### Renewal of Registration.

57. At any time not more than six months before the expiration of the last registration of a trade mark, any person may leave at the Office a fee for the renewal of the registration of the mark, together with Form No. 13. Such person shall indorse upon such form his name and address, and before taking any further step the Registrar may require such person to furnish within five days an authority to pay such fee signed by the registered proprietor, and if such person does not furnish such authority, may return such fee and treat it as not received.

# Notification of Receipt of Renewal Fee.

58. When he does not require such authority, the Registrar shall upon receipt of such fee communicate with the person paying the fee or at his discretion with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed.

# Notice Before Removal of Trade Mark from Register.

59. At a date not less than three months and not more than four months before the expiration of the last registration of a mark, if no fee together with Form No. 13, has been received, the Registrar shall send to the registered proprietor at his registered address a notice in the Form No. 14.

# Advertisement of Non-payment.

60. If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the *Gazette*, and if within one month of such advertisement the renewal fee together with Form No. 13, together with an additional fee and Form No. 15, is received, he may renew the registration without removing the mark from the register.

#### Removal of Trade Mark from Register.

61. Where after one month from such advertisement such fees have not been paid, the Registrar may remove the mark from the register as on the date of the expiration of the last registration, but may upon payment of the renewal fee, together with the additional fee and on receipt of the Form No. 16, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose.

# Removal of Mark from Register.

62. Where a trade mark has been removed from the register the Registrar shall cause to be entered in the register a record of such removal and of the cause thereof.

#### Notice and Advertisement of Renewal.

63. Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address, and the renewal shall be advertised in the *Gazette*.

Indorsement of Renewal on Certificate of Registration.

64. The Registrar shall, at the request of the registered proprietor made upon

Form No. 17, indorse upon the original certificate of registration of a trade mark a statement that the mark has been duly renewed.

#### ALTERATION OF ADDRESS.

# Alteration of Address in Register.

65. Every registered proprietor of a trade mark who alters his address shall forthwith apply to the Registrar to insert the new address on the register, and the Registrar shall alter the register accordingly.

# DISCRETIONARY POWER.

#### Hearing.

66. Before exercising any discretionary power given to the Registrar by the Ordinance adversely to any person, the Registrar shall, if so required, hear the person who will be affected by the exercise of such power.

# Application for Hearing.

67. An application for a hearing shall be made within one month from the date when the matter on which the Registrar is called on to exercise discretionary power has arisen.

# Notice of Hearing.

- 68.—(1) Upon receiving such application the Registrar shall give the person applying ten days' notice of a time when he may be heard by himself or his agent.
- (2) Within five days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the Registrar whether or not he intends to be heard on the matter.

# Notification of Decision.

69. The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected.

#### APPLICATIONS UNDER SECTION 22.

70. All applications to the Registrar under Section 22 of the Ordinance shall be upon Form No. 18. Such application shall be accompanied by a case setting out fully the facts relating to the marks of which the Registrar is requested to permit an apportionment.

#### Registrar to Enquire and Decide.

71. Upon receipt of such request and of such case the Registrar shall enquire into the facts and call for such evidence as he may deem necessary upon the subject of such application. Before giving his decision the Registrar shall, if necessary, give the parties an opportunity of attending before him at a hearing either by themselves or by their agents. The decision of the Registrar shall be in writing.

#### Note in Register.

72. Upon any apportionment of marks under this section the Registrar shall insert in the register a note in connection with each of the registered trade marks of the fact of such apportionment, and shall in such note refer to the date of the decision under which such apportionment has taken place.

#### APPLICATIONS UNDER SECTION 31.

73. Applications under Section 31 of the Ordinance to the Registrar may be made by the registered proprietor, or by the trustee in bankruptcy of the registered proprietor, or where the registered proprietor is a company in liquidation

by the liquidator, and in other cases by such person as the Registrar may decide to be entitled to act in the name of the registered proprietor.

#### Evidence.

74. Where such application is made the Registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made.

# Advertisement of Application.

75. Where application is made to enter a disclaimer or memorandum relating to a trade mark, the Registrar shall advertise the application in the Gazette once a month for a period of three months in order to enable any person desiring so to do to state any reasons in writing against the applicant being allowed to make such disclaimer or enter such memorandum. Such advertisement shall set forth everything required by the Registrar to he entered therein.

#### APPLICATION UNDER SECTION 33.

# Alteration of Trade Mark.

76. Where a person desires to apply under Section 33 of the Ordinance to alter a trade mark, he shall make his application in writing, and shall furnish the Registrar with three copies of the mark as it will appear when altered.

#### Advertisement of Alteration.

77. Before proceeding with such application the Registrar shall advertise in the Gazette the fact that such application has been made. If no representation of the trade mark as altered is inserted in connection with the advertisement, the applicant shall supply a detailed description of the alteration proposed, and it shall be stated in the advertisement that a representation of the trade mark is filed for inspection in the Registrar's Office.

#### SEARCH.

78. The Registrar, if requested so to do in writing, shall cause a search to be made in any class to ascertain whether any marks are on record at the date of such search which may resemble any mark sent in duplicate to him by the person requesting such search and shall cause that person to be informed of the result of such search.

#### Power to Dispense with Evidence.

#### Dispensing with Evidence.

79. Where under these rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Registrar, or at the Office of the Registrar, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar, and upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

#### A MENDMENTS.

#### Amendment of Documents.

80. Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the

Registrar may be obviated without detriment to the interests of any person may be corrected, if the Registrar thinks fit, and on such terms as he may direct.

#### ENLARGEMENT OF TIME.

81. The time prescribed by these rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Registrar, if he thinks fit, upon good cause being shown, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceedings.

# Fees Paid Late by Persons Living at Distances from Office.

82. Where a time for paying a fee is limited by these rules and the person who is bound to pay such fee resides at such distance from the Office that he cannot reasonably be expected to pay the fee on the date limited by the rule, the Registrar, if satisfied that the omission to pay the fee has not been from any want of diligence on the part of the person whose business it is to pay it, may accept the fee even though the date for paying the fee has passed, and treat it as if received on the correct date, provided always that the fee is actually paid with such promptitude as can be expected in the circumstances.

#### CERTIFICATES.

# Certificate by Registrar.

83. The Registrar, when required otherwise than under Section 16 of the Ordinance to give a certificate as to any entry, matter, or thing which he is authorized by the said Ordinance or any of these rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate, but every certificate of registration so given shall have specified on the face thereof whether the same is to be used in legal proceedings, or for the purpose of obtaining registration outside this Colony, or for purposes other than use in legal proceedings or obtaining registration outside this Colony.

#### Marks Registered Without Limitation of Colour.

84. Where a mark is registered without limitation of colour it shall be lawful for the Registrar to grant certificate of its registration for the purpose of obtaining registration outside this Colony either in the colour in which it appears upon the register or in any other colour or colours.

Certificates for Use in Obtaining Registration Outside this Colony.

85. Where a certificate of registration is desired for use in obtaining registration outside this Colony, the Registrar shall affix to the said certificate a copy of the mark, and shall state in such certificate such particulars concerning the registration of the mark as to him may seem fit and may omit therefrom reference to any disclaimers appearing on the register.

#### DECLARATIONS.

Manner in Which, and Person Before Whom, Declaration Is to be Made and Taken.

- 86. The statutory declarations and affidavits (save in so far as sub-section [a] is concerned) required by the Ordinance and these rules, or used in any proceedings thereunder, shall be made and subscribed as follows:
  - (a) In British Guiana in accordance with the provisions of the Statutory Declarations Ordinance, 1893.
  - (b) In any other part of His Majesty's dominions before any court, judge,

- justice of the peace, notary public or any officer authorized by law to administer an oath there for the purpose of a legal proceeding; and
- (c) If made out of His Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or Consul, Vice-Counsul, or other person, exercising the functions of a British Consul, or if due proof be given of the execution of the document as required by Section 29, Ordinance 20 of 1893, before a notary public, or before a judge or magistrate.
- (d) Where made on behalf of a firm or partnership a statutory declaration of affidavit may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof.
- (e) Where made on behalf of a body corporate, a statutory declaration or affidavit may be made by a director or by the secretary or other principal officer of such body corporate.

# Notice of Seal of Officer Taking Declaration to Prove Itself.

87. Save where otherwise provided any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorized to take such declaration in testimony of such declaration having been made and subscribed before him, may be admitted by the Registrar without proof of the genuineness of any such seal or signature, or of the official character of such person or of his authority to take such declaration.

#### APPEALS TO THE COURT.

88. When any person intends to appeal to the Court such appeal shall be made to the Court in its Original Jurisdiction by motion or summons, and no such appeal shall be entertained unless proceedings be commenced within three months from the date of the decision appealed against or within such further time as the Registrar shall allow. The Court appealed to may, on the application of either party or of its own motion, remove any appeal from Chambers to Court or vice versa and may give such directions as to the scale upon which costs may be taxed as to the Court may seem proper.

#### WITHDRAWAL OF APPFALS.

89. Where under section 13 (8) of the Ordinance, an appellant is entitled to withdraw his appeal, such withdrawal shall be effected by notice given to the Registrar and to the other parties, if any, to such appeal within seven days after the leave referred to in such section has been obtained.

# APPLICATIONS TO AND ORDERS OF THE COURT.

# Order of Court.

90. Where an order has been made by the Court in any case under the Ordinance, the person in whose favour such order has been made, or such one of them if more than one, as the Registrar may direct, shall forthwith file in the Office an office copy of such order. The register may, if necessary, thereupon be rectified or altered by the Registrar.

# Publication of Order of Court.

91. Whenever an order is made by the Court under the Ordinance, the Registrar may, if he thinks that such order should be made public, publish it in the Gazette.

Made by the Governor-in-Council under Section 52 of the Trade Marks Ordinance, 1914, his 13th day of April, 1915.

By Command,

(Signed) G. BALL GREENE, Clerk of the Council.

Note: Certain schedules, forms, etc., above referred to are omitted for lack of space.—Ed.

# United States.

# Industrial Property. "Kahn Act." Operation.

In response to an inquiry as to the operation of the "Kahn Act" (see 12 P. & T. M. Rev., 25, 61, 84, 87, 184; vol. 13, p. 155), we are favored by Mr. William Osborn, Clerk in Charge of the Panama-Pacific Exposition Branch Office at San Francisco, with the following interesting resumé:

# OPERATION OF THE "KAHN ACT."

Now that the Exposition at San Francisco is drawing to a close, it is interesting to note the effect of the "Kahn Act" about which there was so much argument and discussion immediately following its passage on September 18, 1913.

Owing to the outbreak of the war in Europe and the consequent very material curtailment of the number and quality of foreign exhibits at the Exposition, plans for establishing offices at San Francisco under the provisions of the Act were held in abeyance by the Commissioner of Patents and the Register of Copyrights, it having been agreed that arrangements should depend entirely upon the volume of business promised.

It was not until October, 1914, that Mr. Frank S. Brittain, general attorney for the Exposition Company, who was temporarily representing the Commissioner of Patents and the Register of Copyrights at San Francisco, received and forwarded to Washington the first application for Certificate of Proprietorship. This was field by an exhibitor from Australia and covered a copyrighted article.

Beginning with January 1, 1915, a representative of the Commissioner of Patents was detailed from Washington and established a Registration Office at the Exposition. A second application involving an Australian copyright was filed in April. Like the prior one, it was promptly referred to the Register of Copyrights at Washington. This completed the activities under the "Kahn Act" so far as the question of copyrights was concerned.

Comparatively few foreign exhibits were in place when the Exposition opened in February, 1915. The United States naval collier "Jason," bearing the European exhibits arrived in San Francisco, by way of the Panama Canal, about the middle of April, but the first application for Certificate under the "Kahn Act," in which the Patent Office was interested, was not filed until August. This application was filed on behalf of the exhibitors of certain mechanical devices covered by British and Spanish patents.

Immediately following this application, on August 17th, 1915, the Commissioners of France, on behalf of certain private French exhibitors presented to the Registration Office sixteen applications for Certificates. Two of these were requested upon mechanical patents, and fourteen upon Trade Marks. These applications were informal and were eventually returned to the French Commissioners. Up to the present writing—that is to say, November 8, 1915—

they have not been renewed, although full and complete instructions as to the requirements of the Patent Office have been furnished.

But one subsequent application has been filed, that involving an exhibit covered by Canadian patents. This last, together with the one filed in August, is still under consideration by the Office as to the adequacy of the showing. No Certificate of Proprietorship on patents or trade marks has as yet been issued.

To sum up the situation under the Kahn Act, twenty applications have been made, divided as follows: Mechanical patents, 4; trade marks, 14; copyrights, 2.

# International Union.

# Official Journals. Contents. LA PROPRIÈTÉ INDUSTRIELLE.

September.

OFFICIAL PART. Domestic Legislation: A. Measures taken by reason of the present state of war. I. Notice concerning the prolongation of the terms of priority in certain foreign countries (July 14, 1915).—II. Notice concerning the prolongation of terms of priority in Belgium (Aug. 17, 1915).—ITALY. Decree concerning the extension of terms for payments relative to industrial property, and for acts necessary for the maintenance in force of patents, designs, and trade marks (No. 962 of June 20, 1915).—B. Ordinary Legislation. Dominican Republic. I. Decree amending Art. 4 of the patent law promulgated April 26, 1911 (Nov. 14, 1914).—II. Decree amending Art. 8 of the law of July 18, 1912, concerning marks of manufacture and of commerce (Nov. 14, 1914).—France. Decree making applicable in Algiers the law of July 14, 1909, concerning designs and models, and the decree of June 26, 1911, regulating the execution of this law (March 18, 1915).

UNOFFICIAL PART. General Observations: Resumé of the principal provisions made, by reason of the present state of war, by the different States in industrial property matters.

Jurisprudence: France. Convention of the Union, Art. 4; necessity of indentity of invention.

Notices and Instructions: (139) United States-France. Existence of reciprocity in whatever concerns the suspension of terms for the working of patented inventions.—(140) France-Switzerland. Existence of reciprocity in whatever concerns the extension of certain terms in industrial property matters.

Bibliography: Periodicals.

#### October.

OFFICIAL PART. Domestic Legislation: A. Measure Taken by Reason of the Present State of War. Germany. Notice concerning the facilities granted in foreign countries in patent, Gebrauchsmuster, and trade mark matters (Sept. 23, 1915). Great Britain. Ordinance concerning the publication of patents of inventions and designs and models having to do with public security and the national defense (Oct. 14, 1915). Hungary. I. Ordinance concerning the prolongaion of the duration of protection of industrial designs and models (Z. 2949-M. E., of Aug. 9, 1915). II. Communication concerning the prolongation of

delay granted for the payment of patent taxes. ITALY. Decree extending to English and French subjects the benefits of the decree of June 20, 1915, prolonging the terms in industrial property matters (Sept. 25, 1915). Sweden. Ordinance granting a delay for the payment of certain patent taxes (Sept. 21, 1915). TUNIS. Decree extending to Tunis the French law of May 27, 1915, establishing temporary rules in industrial property matters (Aug. 28-17 Chaoual, 1333) B. ORDINARY LEGISLATION. DENMARK. I. Law amending the patent law of April 13, 1894, amended May 29, 1901 (No. 59 of Jan. 12, 1915). II. Law amending law No. 107 concerning industrial designs and models (No. 58 of Jan. 12, 1915). III. Law amending the trade mark law of April 11, 1890, revised Dec. 19,1898 (No. 57, of Jan. 12, 1915). IV. Ordinance modifying, as concerns patents, ordinance No. 181, of Sept. 23, 1894, concerning the protection of foreign marks and patents (May 28, 1915). V. Ordinance amending ordinance No. 142, of Sept. I, 1905, concerning the protection of foreign designs and models (May 28, 1915). VI. Ordinance amending, as concerns trade marks, ordinance No. 181, of Sept. 28, 1894, concerning the protection of foreign marks and patents (May 28, 1915). VII. Notice concerning patent applications (June 17, 1915).

UNOFFICIAL PART. Jurisprudence: Germany. War; ordinance of Sept. 10, 1914; restoration to previous state; miscellaneous matters. France. I. Customs; foreign marks; similarity to a French mark; prohibition. II. Customs; foreign marks; similarity to a French mark; appearance of a French product; Convention of the Union; professional syndicate.

Obituary: Edward Bruce Moore.

Bibliography: Periodicals.

Statistics: Argentine Republic. Patents since 1866. Trade marks since 1876. Luxemburg. Industrial property in 1913-1914.

# LE DROIT D'AUTEUR.

# September.

OFFICIAL PART. Special Conventions: Convention concerning one of the States of the Union. Denmark-Russia. Convention for the protection of literary and artistic productions (Feb. 18, 1915).—Executory Measures: Denmark. I. Ordinance concerning the protection of literary and artistic productions produced by Russian subjects (June 11, 1915).—II. Publication concerning the Danish-Russian Convention for the protection of literary and artistic productions (June 30, 1915).

UNOFFICIAL PART. Congresses. Assemblies. Societies: CERMANY. Circle of German libraries.—German Professional Press Associations.—Coöperative Society of German Musical Composers.—United States. Society of American Authors.—France. Society of Men of Letters.—Society of Dramatic Authors and Composers.—Great Britain. British Publishers Association.—Italy. Italian Society of Authors.

Miscellaneous Documents: Contract for Publication. I. France. Extracts from the agreement entered into, March 20, 1915, between Mr. X...., publisher, and Mr. Z...., man of letters, at Paris.—II. Great Britain. Model established, with notes and commentary, by the Committee of the Society of English Authors.

#### October

OFFICIAL PART. Domestic Legislation: Dominican Republic. Law concerning the protection of literary and artistic productions (of Nov. 24, 1914).

Special Conventions: Convention concerning one of the States of the Union. ITALY-United States. Decree concerning the complete legal protection accorded in Italy to citizens of the United States (of May 30, 1915). Annexes: Notes exchanged between the government of the United States and that of Italy.

UNOFFICIAL PART. General Observations: The Netherlands. New regulation for the transitory administration of the organic law of 1912.

Jurisprudence: France. Architectural works; reproduction on post cards of original views of buildings of an exposition; law of 1902; piracy.

Miscellaneous News: International Union: Union matters during the war.—Germany. Concerning special jurisdiction in copyright matters.—The securing of copyright in the United States.—Brazil. Ratification of the Pan-American Conventions of Buenos Aires concerning the protection of intellectual property.—Great Britain. Movement in favor of the conclusion of a copyright treaty with Russia.—Russia. Russian law and Finnish Order concerning copyright.

Obituary: Jules Lermina. Bibliography: New Work

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF AUGUST 24, 1912, OF PATENT AND TRADE MARK REVIEW, published monthly at New York, N. Y., Oct. 1, 1915.

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Known bondholders, mortgagees, and other security holders, holding I per cent or more of total amount of bonds, mortgages, or other securities: (If there are none, so state.) None.

(Signed) WM. WALLACE WHITE,

Editor.

Sworn to and subscribed before me this
Twenty-fifth day of September, 1915.
(Signed) JOHN C. SANDERS,
Notary Public, Bronx County,
Bronx County No. 4, Register's No. 2016 feet filed in New York County

Bronx County No. 4, Register's No. 726; Certifiate filed in New York County. New York Clerk's No. 127—Register's No. 7160.

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# Adjudicated Patents.

No. 804,726. Jenner. Candy-pulling machine. Held valid; held (claims 7 and 8) also infringed, 219 F. R., 753.

No. 822,723. Conrad. Ball-bearing. Held valid and infringed. 219 F. R., 723. No. 831,501. Dickinson. Candy-pulling machine. Held valid; held (claim 1) also infringed. 219 F. R., 753.

No. 836,843. Van Kannel. Collapsible revolving door. 219 F. R., 741.

No. 13,542 (re-issue) (Original No. 821,580.) Baldwin. Miner's acetylenelamp. Held (claim 4) void as broader than the original patent. 219 F. R., 735. No. 617,615. Thatcher. Reinforced concrete arch. Held valid and infringed. 219 F. R., 909.

No. 802,631. Edison. Apparatus for burning Portland-cement clinker. Held void for lack of invention. 219 F. R., 895.

#### Advertisements

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#### **Translations**

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No. 3

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# WM. WALLACE WHITE, Proprietor and Publisher

**Woolworth Building** 

Borough of Manhattan, New York City,

N. Y., U. S. A.

Entered as second-class matter, October 17, 1912, at the Post-Office at New York, N. Y., under the Act of March 3, 1879.

# Patent and Trade Mark Review

Copyright, 1915, by Wm. Wallace White

A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

Edited and Published by
WM. WALLACE WHITE,
Attorney and Counsellor at Law,
Patents and Trade-Marks,
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Thirteen Volumes of the *Review* have been completed, the first beginning with October, 1902, and each subsequent volume with the October issue of the next succeeding year.

Volumes 1 to 10 were paged continuously, but in the new series beginning with Volume 11 each volume will be paged independently.

Back volumes may be obtained separately or as a set until exhausted.

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#### Denmark.

Patents. Designs. Applications. New Regulations. Notice.

New regulations pertaining to filing applications for patents and designs were issued on June 17, 1915. A translation of the texts thereof will be published in an early issue of the Review.

#### Panama.

#### Trade Marks. Renewal. Requirements.

The first application for the renewal of a trade mark registered in Panama since the Republic was established was filed in April, 1915. The officials of the Patent Office after due deliberation decided that no proof of original registration need be furnished.

# Hungary.

Patents. Taxes. Prolongation of Term. War Measure. Decree of Aug. 19, 1915.

(Translation.)

In accordance with the decree No. 54400-1015 of August 19, 1915, of the Royal Hungarian Minister of Commerce the moratorium granted until August 31, 1915, for the payment of patent taxes by virtue of the decree No. 24685-1915 (for text of which see 13, P. & T. M. Rev., 260), has been extended until December 31, 1915. (From Blatt für Patent-, Muster- und Zeichenwesen, Sept. 29, 1915.)

Editor's Note: Inasmuch as Section 2 of the original moratorium (for text of which see 13, P. & T. M. Rev., 171), is to the effect that the moratorium shall be applicable only if the State of the foreigner in question grants similar privileges to Hungarian subjects, it is doubtful whether the above moratorium is applicable to citizens of the United States.

# Luxemburg-Germany.

Patents. Gebrauchsmuster. Trade Marks. Reciprocal Protection. War Measures. Notice of Sept. 23, 1915.

(Translation.)

I. Notice concerning the facilities accorded in foreign countries in the matter of patents, utility models and trade marks.

By virtue of section 3 of the ordinance of the Federal Council of September 10, 1914\* concerning the temporary facilities accorded in the matter of patents, utility models and trade-marks (*Reichsgesetzblatt*, p. 403), notice is hereby given that by reason of a declaration of the Minister of State of the Grand Duchy of Luxemburg the same facilities are accorded in Luxemburg to the subjects of the German Empire.

Berlin, September 23, 1915.

IMPERIAL CHANCELLOR, (Signed) DELBRÜCK,

(From 220 O. G., 1045.)

Acting.



<sup>\*</sup> See 13 P. & T. M. Rev., 6.

## Germany.

# Patents. Gebrauchsmuster. Trade Marks. Applications. Renewals. Agents. Notice.

#### VERBAND DEUTSCHER PATENTANWÄLTE.

Berlin, November, 1915.

#### GENTLEMEN:

We have been confidentially informed that according to a report circulating among American Patent Agents it is generally believed that the German Patent Office does not accept applications for patents, trade marks or designs filed by Americans or persons residing in the United States.

We wish to emphasize that this is false and probably due to misunderstanding! The aforesaid report may perhaps be based on the fact that British Agents on an Order of the Board of Trade\* are kept from doing business with Germany and from transmitting orders received from abroad to this country, such dealings being considered by the British Law as "trading with the enemy," liable to be punished.

We would therefore respectfully notify you that the shortest and safest way of filing cases in the German Patent Office would be to place them direct into the office of a German Patent Attorney without the intermediation of a British Patent Agent.

We formally declare that the German Patent Office accepts all applications even those from subjects of belligerent States and does not make any distinction whatever between Germans and subjects of other countries.

We submit this true statement of facts to you and would be obliged if you would communicate its contents to all whom it may concern.

(Signed) Verband Deutscher Patentanwälte.

# Great Britain.

# Patents. Designs. Trade Marks. Applications. Renewals. Notice to Agents.

BOARD OF TRADE ANNOUNCEMENT TO PATENT AGENTS.

The Board of Trade desire to remind Patent Agents that it is not permissible to receive from agents in enemy countries instructions or documents in respect of applications for the grant or renewal of Patents or applications in respect of the Registration of Designs or Trade Marks in the United Kingdom on behalf of persons in neutral countries.

Patent Agents should satisfy themselves that any instructions or documents which they may receive on behalf of a person in a neutral country have not passed through the hands of an enemy.

November, 1915. (Signed) BOARD OF TRADE. (From Illustrated Official Journal (Patents), Nov. 24, 1915.)

# Patents. Designs. Trade Marks. (Temporary) Rules, 1915 (Second Set), of Oct. 19, 1915.\*

By virtue of the provisions of the Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914†; the Board of Trade hereby make the following Rules:

I. The Comptroller may, at any time during the continuance of these Rule-

<sup>\*</sup> See statement referred to on page 68 of the present issue of the Review.

extend the time prescribed by the Patents and Designs Act, 1907, or the Trade Marks Act, 1905, or any Rules made thereunder, for doing any act, upon such terms and subject to such conditions as he may think fit, where the doing of such act would by reason of the present state of war be prejudicial to the public interest.

2. These Rules shall be called the Patents, Designs, and Trade Marks (Temporary) Rules, 1915 (Second Set) and shall come into operation as and from the 14th day of October, 1915.

Dated the 19th day of October, 1915.

(Signed) WALTER RUNCIMAN,

President of the Board of Trade.

(From The Illustrated Official Journal (Patents), No. 1399, of Nov. 10, 1915.)

• See also Germany Circular Letter on p. 68 of the present issue of the Review. † See 13 P. & T. M. Rev.

## Mexico.

# Patents. Allowances During Huerta and Convention Régimes. Revalidation. Notice of Dec., 1915.

(Translation.)

Under date of yesterday (December, 1915) the Secretary of Public Works, Colonization, and Industry apprised the Department of Patents and Marks of the following: As complement of the order of this Bureau dated Sept. 24, last,\* those interested are advised that when, through any circumstance, they cannot transmit with their applications the Patents issued by the said Convention Governments, there shall be presented at the Office of Patents and Marks with the application, wherein they ask that these patents be revalidated, a copy of the drawings, of the specification, and of the claims that accompanied their initial applications. Likewise, be it known that there is conceded until Jan. 31, 1916, for soliciting the revalidation of patents, the registration of marks, etc., issued and made during the said régimes of Huerta and of the Convention.

The Deputy Subsecretary of State,
(Signed) PASTOR ROUAIX.

# Patents. Trade Marks. Applications. Assignments. Corporations. Proof of Ownership. Order of Dec., 1915.

Under same date \* the Department of Patents and Marks signed the following order:

Inasmuch as certain persons have solicited in this Office and are yet soliciting the issue of patents, registration of marks, commercial names, etc., in favor of companies and corporations, which seem at times of doubtful validity, and inasmuch as, likewise, there have been issued patents in favor of persons that inventors or their representatives designate without having proven having made the assignment of rights in the form wherein the laws provide, this Bureau, in my charge, in order to correct these unjustified practices, has issued the following orders:

1. In the future, all those that solicit the issue of patents, the registration of marks, commercial names, etc., etc., in favor of corporations or companies,

<sup>\*</sup> Same date as revalidation order for translation of which see elsewhere in this issue of the Review.



<sup>\*</sup> For notice of this Order see 13 P. & T. M. Rev., 45.

shall duly prove the legal existence of these corporations or companies, as well as their legal authority to represent them.

It will suffice that those interested show to the Chief of this Department of Patents or to that of Marks, as the case may be, the enabling documents from the said legal personages, in order that this may evidence having seen the documents of reference: and

2. Patents shall be issued only in favor of inventors that solicit them personally or through attorney, save that it be proven there having been assigned their rights in legal form, and in this case the patents shall be issued in favor of the assignee.

## Hungary.

Designs. Models. Extension of Protection. War Measure. Ordinance of Aug. 9, 1915.

(Translation.)

Ordinance of the Royal Hungarian Ministry concerning the extension of the time of protection of industrial designs and models.

(V. 2049/M. E., of August 9, 1915.)

Section 1. The point of beginning and the term of protection of industrial designs and models (sec. 6 of ordinance Z. 107,709/1907 K. M.; see *Prop. Ind.*, 1908, p. 67) are hereby suspended from July 26, 1914, to a date to be fixed by a future ordinance.

Hence, as to industrial designs and models filed prior to July 26, 1914, the unexpired part of the time of protection shall not again begin to run until the date to be fixed by a future ordinance. As to industrial designs and models filed on or after July 26, 1914, the term of protection shall begin on the date to be fixed by a future ordinance. The part of the term of protection which had elapsed prior to July 26, 1914, shall be counted by whole months and a shorter period than a month shall not be counted.

The foregoing provisions are applicable to designs and mode's the term of protection of which expires during the period comprised between July 26, 1914, and the date when this ordinance shall go into force. But if a person has used a design or model before this ordinance goes into force, such person shall not be liable to prosecution on that account and shall have the right to continue to use the design or model. Notwithstanding the suspension of the duration of the term of protection, the designs and models shall continue to enjoy full and complete legal protection.

SEC. 2. When a design or model the term of protection of which is extended under this ordinance has already been canceled upon the register, such cancellation shall be considered as not having occurred and the record relating thereto shall be declared to be null and void. In such case the design or model shall be transferred from the designs and models which are free to the public to those which are still enjoying protection.

SEC. 3. With regard to designs and models the one or two year term of protection of which has not yet expired or which have been filed for one or two years during the period referred to in the first paragraph of section I above mentioned, the applicant may subsequently claim the longer term of protection allowed,

upon payment of the taxes accrued to the competent chambers of industry and commerce. Such extension shall however not be claimed more than once.

Sec. 4. The extension provided for in section I is applicable by analogy to the period during which the model must be used within the home country and to the period during which the design or model is to be kept secret (sec. 27 of the ordinance Z. 107,709/1907 K. M.). But when a design and model filed in a sealed envelope has been transferred from the archives of secret designs and models to the archives of openly-filed designs and models, the design or model in question shall remain in the archives of openly-filed designs and models.

SEC. 5. This ordinance shall go into force from the date of its publication. (From 220 O. G., 1045.)

#### Colombia.

Trade Marks. Applications. Assignments. Publication. Increased Fees. Resolution No. 4 of March 9, 1915.

(Translations.)

RESOLUTION NO. 4 OF 1915.

(March 9)

WHEREBY NUMBER 3 OF FEB. 22 OF THE PRESENT YEAR IS AMENDED REGARDING THE FIXING OF THE FEES THAT SHALL BE PAID FOR THE PUBLICATION OF CERTAIN DOCUMENTS.

THE MINISTER OF THE GOVERNMENT, by virtue of his authority, Resolves:

In accordance with the provisions of law No. 110 of 1914,\* the fee that individuals shall pay for the publication in the *Diario Oficial* for applications for the registration of marks of manufacture, of commerce, and agriculture, certificates of registry for the same, and the extract from the adjudged decrees in actions concerning protection of industrial property shall be the following:

- (a) For the text of applications for registration made at the Ministry of Agriculture and Commerce by individuals, embellished with their respective cliché, of wood or metal, that may be used in the official periodical, of the type level that is used in printing, which shall be of brevier face, and shall not be more than twelve centimeters in width, shall be two pesos fifty centavos (\$2.50). When the mark consists of a strip of a length greater than twelve centimeters, or of a group of signs, this strip and the signs may be divided into several parts, which shall be reproduced in another or other clichés of the same dimensions, which shall be printed one following the other, or be reproduced proportionally in a single cliché, these surplus parts being reckoned on a basis of twelve centavos (\$0.12) for each one.
- (b) For the publication of certificates of registry, for three insertions, three pesos (\$3.00), and a like fee for the publication of each extract from adjudged decrees in cases of opposition, or application for cancellation regarding the registration of a mark.
- (c). The publication of applications of assignment of a mark and the respective Resolution shall incur for the single insertion that is made thereof two pesos (\$2.00).

<sup>\*</sup> For translation of this law see 13 P. & T. M. Rev., 147.

These fees shall be collected in advance by the Cashier Accountant of the National Press, who shall issue receipt to those interested for the sum paid, without whose requisition the insertion in the Diario Oficial shall not be ordered.

Resolution No. 3 of Feb. 22 of the present year is amended in these terms Let it be published and enforced.

Given at Bogotá on the ninth of March, 1915.

The Minister of the Government,

(Signed) MIGUEL ARADIA MENDEZ.

(From Diario Oficial, Bogotá, March 18, 1915.)

Trade Marks. Renewals. Publication. Fees. Resolution No. 7 of April 12, 1915.

## RESOLUTION NO. 7 OF 1915.

WHEREBY NUMBER 4 OF MARCH 9, OF THE CURRENT YEAR IS AUGMENTED.

THE MINISTER OF THE GOVERNMENT, by virtue of his legal attributes, RESOLVES: Applications for the renewal of marks and the respective Resolutions of the Ministry of Agriculture and Commerce shall pay for the insertion in the *Diario Oficial*, for each time, the sum of two pesos (\$2.00) gold.

Resolution No. 4 of March 9, 1915, is augmented in these terms.

Be it communicated and published.

Given at Bogotá on the twelfth of April, 1915.

The Minister of the Government.

(Signed) MIGUEL ARADIA MENDEZ.

(From Diario Oficial, Bogotá, April 16, 1915.)

#### New Zealand.

Trade Marks. Suspension. Procedure. Appointment of Referee. Powers. War Measure.

Appointing a person to hold inquiry into an application for avoidance or suspension of a trade mark.

# LIVERPOOL, Governor. ORDER IN COUNCIL

At the Government House at Wellington, this sixth day of September, 1915.

#### Present:

HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

Whereas by the Patents, Designs, and Trade Marks Act, 1914\*, and the regulations thereunder, the Governor in Council may, on the application of any person, and subject to such terms and conditions, if any, as he may think fit, order the avoidance or suspension, in whole or in part, of any patent or license granted to a subject of any State at war with His Majesty, or of the registration of any trade mark, the proprietor whereof is a subject of any such State as aforesaid:

And whereas for the purpose of exercising in any case the powers of avoid-

<sup>\*</sup> For summary of this Act see 13 P. & T. M. Rev., 138.



ing or suspending any such patent or license, or the registration of any such trade mark, the Governor in Council may appoint such person or persons as he shall think fit to hold an inquiry:

And whereas an application, dated the twelfth day of June, one thousand nine hundred and fifteen, and signed by W. S. Laurie and Co., of Custom Street, Auckland, in the Dominion of New Zealand, Merchants, has been received for the avoidance or suspension of the registration of trade marks No. 1720/1386, registered as of the twentieth day of June, one thousand nine hundred and six, and No. 8077/7249, registered as of the thirty-first day of August, one thousand nine hundred and ten, both in the name of Thomasphosphat-Fabriken Gesellschaft mit beschränkter Haftung, of Karlsbad 17, Berlin, in the Kingdom of Prussia, and consisting of the device of a star:

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, in pursuance and exercise of the powers conferred upon him as aforesaid, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby appoint you,

#### JAMES CLARK LEWIS

the Registrar of Patents, Designs, and Trade Marks, to forthwith hear the said applications, and to inquire into the matter of the same, and to report thereon to the Governor in Council on or before the thirtieth day of November, one thousand nine hundred and fifteen.

(Signed) J. F. Andrews,

Clerk of the Executive Council.

(From New Zealand Patent Office Journal, Sept. 30, 1915.)

Trade Marks. "De Reszke." Uncommon Surname. Distinctive Mark.

Decision.

IN THE SUPREME COURT.—IN CHAMBERS

Before Sir Robert Stout, Chief Justice.

7th September, 1915.

In the matter of an application, No. 12451, for the registration of a trade mark by Millhoff and Co., Limited.

Trade mark—"De Reszke"—Application for Registration in respect of Cigarettes— Distinctive Mark—Uncommon Surname—User—Patents, Designs, and Trade Marks Act, 1911, Section 64, Subsection (1) (e).\*

Upon an application for an order declaring the words "De Reszke" registrable as a trade mark in respect of cigarettes on the ground of their being a distinctive mark under the Patents, Designs, and Trade Marks Act, 1911, Section 64, Subsection (1) (e).

Held, That the words be deemed to be a distinctive mark, and an order be made as moved, on the grounds of user for many years in connection with tobacco, that it is a name unknown in New Zealand, and is quite different from our common surnames. £3 3s. costs allowed to the Registrar of Patents.

Mr. Young for J. Millhoff and Co., Limited.

Mr. Meredith (Crown Law Office) for the Registrar of Trade Marks.

<sup>\*</sup> See 10 P. & T. M. Rev., 3761, particularly p. 3765.

STOUT, C. J.:

I am of opinion that the order should be made as moved. The Patents, Designs, and Trade Marks Act, 1911, Section 64 (e), has undoubtedly altered the law. In former times a surname was disallowed because a man might be deprived of the use of his own name. But here the name "De Reszke" has been used for many years in connection with tobacco. Further, it is a name unknown in New Zealand. It is a distinctive name quite different from our common surnames. The Registrar of Patents will have the usual costs, £3 3s.

Order made.

Solicitors for the applicant: Young and Tripe, Wellington.

Solicitors for the Registrar of Patents: Crown Law Office, Wellington. (From New Zealand Patent Office Journal, Sept. 30, 1915.)

Trade Marks. "Lysol." Alien Enemy. Suspension under War Measures.

Decision.

#### LIVERPOOL, Governor.

#### ORDER IN COUNCIL

At the Government House in Wellington, this 23rd day of August, 1915

Present:

#### HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS by the Patents, Designs, and Trade Marks Amendment Act, 1914,\* and the regulations thereunder, it is provided that the Governor in Council may, on the application of any person, and subject to such terms and conditions (if any) as he may think fit, order the avoidance or suspension in whole or in part of the registration of any trade mark the proprietor whereof is a subject of any State at war with His Majesty:

And whereas application has been made by Herbert Albert Reeves, of 15 Elm Street, London, W. C., England, on behalf of Pearson's Antiseptic Company (Limited), of the same address, for the avoidance or suspension of the registration of trade mark No. 6182, registered as on the fifteenth day of September, one thousand nine hundred and six, in the name of Schulke and Mayr, of Hamburg 21, in the German Empire, and consisting of the word "Lysol":

And whereas, on consideration of the said application and of the report of James Clark Lewis thereon, the Governor in Council has determined to make such order as hereinafter appears:

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, in pursuance and exercise of the powers conferred upon him by the said Act and regulations, and of all other powers enabling him in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby order that the registration of the trade mark No. 6182, registered in Class 2, shall, unless and until the Governor in Council shall otherwise order, be suspended so far as regards and in favour of the said Pearson's Antiseptic Company (Limited), subject to the following terms and conditions:

<sup>\*</sup> For summary of this Act see 13 P. & T. M. Rev., 138.

- (a) That any Lysol to which the trade mark is affixed by the company or on its behalf is of such purity and strength as may be approved by the Dominion Analyst.
- (b) That the price at which any such Lysol to which the name is applied will be sold by the company or on its behalf shall not exceed the market price of the goods obtained in New Zealand immediately before the commencement of the present state of war, plus any additional cost attributable to increased cost of raw material, as may be decided by the Minister of Justice.
- (c) That the company shall use with the name "Lysol" some other mark or means for distinguishing the goods.
- (d) That the company shall during the continuance of the suspension keep proper accounts, containing full particulars of all Lysol to which that name is applied sold by the company or on its behalf, and of the price or prices charged therefor.
- (e) The company shall during the continuance of the suspension furnish, or procure to be furnished all such information as the Minister may consider to be material for the purpose of ascertaining the cost of producing any Lysol to which the trade mark is affixed by the company or on its behalf or, where the Lysol is imported into New Zealand from abroad the cost price of the Lysol landed in New Zealand; and the price or prices charged for the said Lysol; and for that purpose shall, if requested by the Minister, permit or procure permission to be given to such person or persons as may be authorized in that behalf by the Minister at any time or times to enter upon and inspect at any reasonable time any factory or place of business in which the manufacture or sale of Lysol is carried on by the company.

(Signed) J. F. Andrews, Clerk of the Executive Council.

(From New Zealand Patent Office Journal, Sept. 16, 1915.)

# Philippine Islands.

# Trade Marks. Recording of Registered Trade Marks. Official Opinion of Solicitor-General, Aug. 28, 1908.

From time to time there has arisen inquiry as to the legal standing of trade marks in the Philippine Islands, particularly those that are unregistrable there due to their descriptive character, or through other failure to meet the strict requirements of the letter of the law. An anomalous condition, arising from the effort to coalesce the present insular with the prior Civil law, has arisen. There was early noted the need of provisions for the restraint of unfair trade. During the early period of occupation, such regulation was left to the War Department, and, necessarily, few rules could be formulated until conditions for complaint should arise. This was especially true, as has been pointed out frequently in the pages of the Review, because of the character of the commerce of the Orient, and the repeated infringement of the marks of old and established houses. To meet such conditions the legal authorities were requested to give opinion as to the extent of protection afforded in the Philippines by the Common and Statute Laws of the United States After a close study of the matter, and a comparison of authorities and precedents, the Solicitor General, Mr. G. R. Harvey, rendered an extended opinion on Aug. 28, 1908, which we reprint, with the accompanying documents, from the manuscript copy kindly furnished recently by the Bureau of Insular Affairs.

It will be noted that this amplifies the rule laid down in Administrative Circular No. 563 (for text of which see 8 P. & T. M. Rev., 3184), and apparently overrules the opinion of the Law Officer of the Bureau of Insular Affairs dated June 2, 1905 (see 7 P. & T. M. Rev., 2818), as well as Circular Letter No. 47 issued from the Office of the Insular Collector of Customs at Manila.

(Copy.)

#### 116975

#### BRITISH CONSULATE-GENERAL,

#### Manila.

June 8, 1908.

Sir:

I have the honour to submit the following question for your consideration and opinion.

In the course of correspondence between the Insular Collector of Customs and this Office on the subject of the exclusion of imitations of goods manufactured in Great Britain, Colonel Colton states that he cannot exclude imitations unless and until proof is submitted to him that the trade mark of the goods imitated has been registered duly in the United States, and that the proper mode of proving such registration is by a certificate signed by the Commissioner of Patents at Washington, D. C.

In this connection I asked the Collector of Customs verbally if he would refuse admission to imported imitations provided registration of the trade mark of the imitated goods in question had been effected in this city in accordance with Act of the Commission No. 666. To this question Colonel Colton replied that registration at Manila would have absolutely no effect on action taken by his Office. His sole requirement as I am given clearly to understand, is the production of a certificate as described above.

The question of the protection of trade marks is one of the utmost importance to British manufacturers having interests in these Islands and as it appears to me that the attitude adopted by the Insular Collector of Customs is hardly in accordance with the letter or spirit of Act. No. 666 I have the honour to solicit your attention to the matter and to request a ruling from your Government on the point at issue.

With assurances of my most distinguished consideration, I have the honour to be, Sir,

Your obedient Servant,

(Signed) Hugh Horne, Acting British Consul-General.

#### Ist Indorsement.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
EXECUTIVE BUREAU

MANILA.

June 11, 1908.

Respectfully referred to the Attorney-General, for opinion as to whether the

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filing of a trade-mark in the Division of Archives, Patents, Copyrights, and Trade Marks, which trade mark is also owned and filed in a country, a member of the Union, would authorize the Insular Collector of Customs to prohibit importation into the Philippine Islands of goods bearing fraudulent imitations or counterfeits of such mark.

The following citations may be of assistance. They are all I have found on a somewhat cursory examination:

	Sec. 24	90, U	. ა.	r. s.	
	U. S. S	Stats.	at I	arge.	
21	**	"	"	"	p 502-3
22	"	"	"	"	298
25	"	44	66	"	1372
30	"	44	"	"	207
34	**	"	44	"	168
34	"	"	"	"	1257

(Signed) THOMAS CARY WELCH,
Acting Executive Secretary.
(6/12/08)

#### 2nd Indorsement

# THE GOVERNMENT OF THE PHILIPPINE ISLANDS OFFICE OF THE ATTORNEY-GENERAL FOR THE PHILIPPINE ISLANDS.

Manila, August 28, 1908.

Respectfully returned to the Executive Secretary, inviting attention to the enclosed opinion.

(Signed) IGNACIO VILLAMOR, Attorney General.

Enclosure: Opinion.

16376

#### ENCLOSURE TO SECOND INDORSEMENT.

Manila, August 28, 1908.

Sir:

Pursuant to the attached letter and your indorsement thereon, I have the honor to render an opinion upon the question therein raised with reference to the registration of trade marks. If said letter and indorsement are correctly understood, the trade mark referred to is registered in England, a member of the International Union for the Protection of Industrial Property, and in the Division of Archives, Patents, Copyrights and Trade Marks in Manila. In that case, the question raised and on which an opinion is asked is the following:

When the owner of a foreign trade mark has registered the same in the country of its origin for use on goods manufactured in that country, a member of the International Union for the Protection of Industrial Property, does the registration of such trade mark in the Division of Archives, Patents, Copyrights and Trade Marks in Manila, for use on such goods imported into the Philippine Islands, authorize the Insular



Collector of Customs to exclude from these Islands importation of goods which copy or simulate such registered trade mark; or is the Insular Collector of Customs authorized to require proof to be submitted to him that the trade mark so imitated has been duly registered in the Patent Office at Washington, D. C., and if so, is a certificate signed by the Commissioner of Patents at Washington the proper mode of proving such registration?

Inasmuch as there appears to have been considerable difference of opinion on this question, it seems to be necessary to commence at the beginning of American occupation in the Philippine Islands and trace the law on the subject of trade marks down to the present time.

On April 11, 1899, when the Philippines were being governed by the President by virtue of his war powers, the Secretary of War published Circular No. 12, Division of Customs and Insular Affairs, for the information and guidance of all concerned, which provides as follows:

In territory subject to military government by the military forces of the United States, owners of patents, including design patents, which have been issued, or which may hereafter be issued, and owners of trade marks prints, and labels, duly registered in the United States Patent Office under the laws of the United States relating to the grant of patents and to the registration of trade marks, prints, and labels, shall receive the protection accorded them in the United States under said laws; and an infringement of the rights secured by lawful issue of a patent or by registration of a trade mark, print, or label shall subject the person or party guilty of such infringement to the liabilities created and imposed by the laws of the United States relating to said matters: Provided, That a duly certified copy of the patent or of the certificate of registration of a trade mark, print, or label, shall be filed in the office of the Governor General of the island wherein such protection is desired: and, Provided further, That the rights of property in patents and trade marks secured in the islands of Cuba, Porto Rico, the Philippines, and other ceded territory, to persons under the Spanish laws, shall be respected in said territory, the same as if such laws were in full force and effect.

Thereafter, on June 1, 1899, the Assistant Secretary of War published Circular No. 21, Division of Customs and Insular Affairs, for the information and guidance of all concerned, which provides as follows:

Parties who desire protection in territory under government of the military forces of the United States for patents, trade marks, prints, or labels, as provided in Circu'ar No. 12, Division of Customs and Insular Affairs, War Department, should forward a certified copy of the patent or of the certificate of registration of the trade mark, print, or label, together with a letter of transmittal to the Governor General, requesting that such copy be filed in his office for reference.

Upon the receipt of such certified copy the Governor General will issue his formal receipt therefor and forward it to the party filing the same.

A fee of one dollar will be charged for filing such copy and should be enclosed with the letter of transmittal to the Governor General.

The requirements for filing under the provisions of Circular No. 12, above referred to, apply only to patents duly issued, and to trade marks, prints or labels duly registered in the United States Patent Office under

the laws of the United States. The only certification required is that issued by the Commissioner of Patents. Communications should be addressed to the Governor General of Cuba, Havana, Cuba; or Governor General of Porto Rico, San Juan, Porto Rico; or Governor General of the Philippine Islands, Manila, Philippine Islands.

Thereafter, on September 25, 1809, the Assistant Secretary of War published Circular No. 34, Division of Customs and Insular Affairs, for the information and guidance of all concerned, which provides as follows:

So much of Circular No. 21, of the Division of Customs and Insular Affairs, War Department, dated June 1, 1899, as requires the payment of a fee for filing certified copies of patents or certificates of registration of trade marks, prints or labels, is hereby rescinded.

Said Circular No. 21 is hereby further amended by the addition thereto of the following paragraphs:

A power-of-attorney from the owner thereof authorizing another for him and in his name, place and stead, to file a certified copy of a patent or a certificate of registration of a trade mark, print or label, must be filed with such certified copy of certificate of registration in each of the islands wherein the protection of such patents, trade marks, prints or labels is desired.

Assignment of patents, trade marks, prints or labels, or certified copies thereof, must be filed in the same manner as herein provided for filing certified copies of patents, and certificates of registration of trade marks, prints or labels.

Thereafter, on March 9, 1900, the Assistant Secretary of War sent a cable-gram to General Otis at Manila which read as follows:

So much of Circular thirty-four, Division of Customs and Insular Affairs, as applies fees revoked.

On June 26, 1899, the United States Military Governor in the Philippine Islands issued General Orders No. 24, as follows:

I. The Offices of Patents, of Copyrights and of Trade Marks, heretofore administered as separate bureaux of the "Dirreccion General de Administracion Civil," are hereby consolidated into a single office, to be known as the Office of Patents, Copyrights and Trade Marks and placed in charge of Captain George P. Ahern, 9th U. S. Infantry, who will receipt to the Spanish authorities for all records, documents and property pertaining thereto.

II. The duties enjoined in Circular No. 12, Division of Customs and Insular Affairs, in reference to the filing here of patents and trade marks, issued in the United States and duly registered in the U. S. Patent Office, and all duties which, under the laws relating to patents, copyrights and trade marks applicable to the Philippines, pertained to the "Director General de Administracion Civil" and his subordinates, are hereby devolved upon the officer in charge of the Office of Patents, Copyrights and Trade Marks above designated; all matters of administration arising in that office which, under those laws, required the action of any higher authority than the "Director General de Administracion Civil," will be forwarded for consideration and action to the Office of the United States Military Governor in the Philippines.

III. So much of Article 27 of the Royal Decree of October 26, 1888,

regulating the concession and use of trade marks, as required reference to the "Real Sociedad Economica" of industrial marks, designs or models presented for registration, for investigation and report as to whether such marks, designs or models are already in use or are the property of third persons, is hereby suspended.

On April 7, 1900, while the Philippine Islands were being governed under the authority and direction of the President as Commander-in-Chief of the Army and Navy of the United States, the President appointed a civil commission to visit the Philippines for the purpose of establishing civil government in the Philippine Islands. In his instructions to said commission, President McKinley said in part as follows:

Beginning with the 1st day of September, 1900, the authority to exercise, subject to my approval, through the Secretary of War, that part of the power of government in the Philippine Islands which is of a legislative nature is to be transferred from the Military Governor of the Islands to this Commission, to be thereafter exercised by them in the place and stead of the Military Governor, under such rules and regulations as you shall prescribe, until the establishment of the civil central government for the Islands contemplated in the last foregoing paragraph, or until Congress shall otherwise provide. Exercise of this legislative authority will include the making of rules and orders, having the effect of law, for the raising of revenue by taxes, customs, duties, and imposts; the appropriation and expenditure of public funds of the Islands; the establishment of an educational system throughout the Islands; the establishment of a system to secure an efficient civil service; the organization and establishment of courts; the organization and establishment of municipal and departmental governments, and all other matters of a civil nature for which the Military Governor is now competent to provide by rules or orders of a legislative character.

It should be observed that by the foregoing instructions of the President only that part of the power of government in the Philippine Islands which was of a legislative nature was transferred from the Military Governor to the Commission, and, of course, only such legislative power as could have been theretofore properly exercised by the Military Governor was thereby transferred. Among the legislative powers thus conferred there was but one affecting foreign commerce; that is, the power to make rules and orders, having the effect of law, for the raising of revenue by customs duties; this power was exercised by the Commission in the passage of Act No. 230, on September 17, 1901; but afterwards on March 8, 1902, Congress assumed the exercise of this legislative power by passing an Act entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes," and has since passed the Tariff Revision Act of March 3, 1905, which entirely superseded said Act No. 230 and the Act of Congress confirming same.

By reason of the insurrection in progress in the Philippine Islands, Congress doubtless hesitated during its continuance to enact and put into operation a law for the establishment of civil government, and, instead of so doing, provided by what is known as the Spooner amendment to the appropriation act of March 2, 1901, that—

All military, civil and judicial powers necessary to govern the Philippine Islands \* \* \* shall, until otherwise provided by Congress, be

vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property and religion \* \* \* (31 Stat. at L., p. 910.)

The foreging provision was doubtless enacted in order that Congress might expressly sanction the government established in these Islands by the President and authorize the continuance of same under the direction of the President until Congress should provide for the administration of the affairs of civil government in such island territory.

In the exercise of his authority under said Spooner amendment, the President, on June 21, 1901, issued an order relieving the Military Governor of his civil duties and appointing Hon. William H. Taft as Civil Governor. Said order is in part as follows:

On and after the fourth day of July, 1901, until it shall be otherwise ordered, the President of the Philippine Commission will exercise the executive authority in all civil affairs in the government of the Philippine Islands heretofore exercised in such affairs by the Military Governor of the Philippines, and to that end the Hon. William H. Taft, President of the said Commission, is hereby appointed Civil Governor of the Philippine Islands. Such executive authority will be exercised under and in conformity to the instructions to the Philippine Commissioners, dated April 7, 1900, and subject to the approval and control of the Secretary of War of the United States.

From the foregoing order of the President it appears that the executive powers of the civil government of the Philippine Islands, as well as the legislative powers, were to be exercised under and in conformity to the President's instructions and, subject to the approval and control of the Secretary of War.

Thereafter, on July 1, 1902, the Congress of the United States passed an Act entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," commonly known as the "Philippine Bill," and therein expressly approved, ratified, and confirmed the action of the President in creating the Philippine Commission and authorizing said Commission to exercise the powers of the government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April 7, 1900, et cetera, as shown by the following provisions from the first section of said Act:

"That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April seventh, nineteen hundred, and in creating the offices of Civil Governor and Vice-Governor of the Philippine Islands, and authorizing said Civil Governor and Vice-Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June twenty-first, nineteen hundred and one, and in establishing four executive departments of government in said Islands as set forth in the act of the Philippine Commission, entitled 'An Act providing an organization for

the Departments of the Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction,' enacted September sixth, nineteen hundred and one, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided,"

Therefore, it clearly appears that the legis: a tive powers of the Philippine Commission were such as had been conferred in the President's instructions, which were confirmed by the subsequent action of Congress, with such additional powers as Congress has since seen fit to confer and with such limitations as it has deemed proper to impose.

On March 6th, 1903, the Philippine Commission, in the exercise of its general legislative powers, passed Act. No. 666, entitled "An Act defining property in trade marks and in trade names and providing for the protection of the same, defining unfair competition and providing remedies against the same, providing registration for trade marks and trade names and defining the effect to be given to registration under the Spanish royal decree of eighteen hundred and eighty-eight, relating to registration of trade marks, and the effect to be given to registration under this Act."

Section 21 of said Act No. 666. provides as follows:

All the duties appertaining to the Bureau of Patents, Copyrights and Trade Marks are hereby devolved upon the Chief of the Bureau of Forestry. Thereafter, on April 8, 1903, the Philippine Commission passed Act No. 744, entitled "An Act placing the Bureau of Patents, Copyrights, and Trade Marks under the immediate direction of the Chief of the Bureau of Archives subject to executive control of the Secretary of Public Instruction, increasing the number of employees of said Bureau of Patents, Copyrights, and Trade Marks, and amending Acts Numbered Six hundred and thirty-seven and Six hundred and sixty-six."

Thereafter, on October 26, 1905, the Philippine Commission passed Act No. 1407, known as "The Reorganization Act," and in section 3 (b) thereof provided as follows:

The Bureau of Archives and the Bureau of Patents, Copyrights, and Trade Marks are hereby abolished as Bureaus and are constituted a division of the Executive Bureau to be known as the Division of Archives, Patents, Copyrights and Trade Marks, by which the duties and services required of the Bureau of Achives and of the Bureau of Patents, Copyrights, and Trade Marks and of the Chief of said Bureaus, by laws in force at the time of the passage of this Act, shall be performed under the general supervision and control of the Executive Secretary.

Section II of Act No. 666 provides as follows:

The owners of trade marks or trade names domiciled in the Philippine Islands, or the United States, or in any foreign country which by treaty, convention, or law affords similar privileges to the citizens of the United States and of the Philippine Islands, may obtain registration of such trade marks or trade names by complying with the following requirements:

First. By causing to be recorded in the Bureau of Patents, Copyrights, and Trade Marks a statement specifying the name, domicile, location, and citizenship of the applicant; the general class or classes of merchandise to which the trade mark claimed has been appropriated; or in case of a trade name the description of the business, profession, or occupation it is to distinguish; a description of the trade mark or trade name itself, with

facsimiles thereof, and a statement of the mode in which the same is applied and affixed to goods or is to be used in the business, profession, or occupation, and the length of time during which the trade mark or trade name has been used.

Second. By paying into the Bureau of Patents, Copyrights, and Trade Marks the sum of twenty-five dollars, in money of the United States, and complying with such regulations as may be prescribed by the Chief of said Bureau.

Section 12 of Act No. 666 provides:

The application prescribed in the foregoing section must be accompanied by a written decaration verified by the person, or by a member of the firm, or by an officer of the corporation applying, to the effect that such party has at the time a right to the use of the trade mark or trade name sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and facsimiles presented for registry truly represent the trade mark sought to be registered.

Section 14 of said Act No 666 provides as follows:

Certificates of registration of trade marks and and trade names under the Spanish sovereignity in these Islands, unaunu'led under the royal decree of eighteen hundred and eighty-eight, shall be conclusive evidence of the exclusive right of ownership of such trade marks or trade names in respect to the goods and articles or merchandise or the business, profession, or occupation to which they by the terms of the registration apply.

Section 15 of said Act No. 666, as amended by said Act No. 803, provides as follows:

Certificates of registry of trade marks and trade names shall be issued in the name of the Insular Government of the Philippine Archipelago, under the seal of the Bureau of Patents, Copyrights, and Trade Marks, and shall be signed by the Chief of said Bureau; and a record thereof, together with printed copies of the specific trade marks or trade names shall be kept by him in books for that purpose. Certified copies of trademarks or trade names and of statements and declarations filed therewith, and original certificates or registry, shall be evidence in any suit in which such trade marks or trade names shall be brought into controversy. But registration of trade marks and trade names under this Act shall only be prima facie evidence of the exclusive right by the person securing the registration to use the same.

Section 16 of said Act No. 666 provides as follows:

A certificate of registry shall remain in force for thirty years from its date, except in cases where the trade mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed on the same terms and for a like period.

A trade mark law is a regulation of commerce, and Congress is vested by

the Constitution with the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The exercise of this constitutional power by Congress is necessarily exclusive; but since a State may regulate its own internal commerce, the Philippine Commission doubtless possessed the power to enact a trade mark law for the registration and protection of trade marks used in the internal commerce of the Philippine Islands; such laws have been enacted in a number of the States. (See 28 Am. & Eng. Enc. of Law, p. 436.) While said Act No. 666 says in section 11 that the owners of trade marks or trade names domiciled in the Philippine Islands, or the United States, or in any foreign country which by treaty, convention, or law affords similar privileges to citizens of the United States and of the Philippine Islands, may obtain registration of such trade marks or trade names by complying with certain requirements, there is nothing in the Act authorizing, regulating, or protecting the use of such trade marks or trade names on goods transported between the United States and the Philippine Islands or between foreign countries and the Philippine Islands. The first trade mark law enacted by Congress was declared by the Supreme Court to be unconstitutional for the very reason that it did not appear on the face of the law that it was limited to the regulation of commerce with foreign nations and among the several States and with the Indian tribes. In the Trade Mark Cases (100 U. S., pp. 82, 96), the Supreme Court, speaking through Mr. Justice Miller, said:

When, therefore, Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations or among the several States, or with the Indian tribes. If not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress.

After laying down this important principle, the Court said:

We find no recognition of this principle in the chapter on trade marks in the Revised Statutes. We would naturally look for this in the description of the class of persons who are entitled to register a trade mark, or in reference to the goods to which it should be applied. for instance, the statute described persons engaged in a commerce between the different States, and related to the use of trade marks in such commerce, it would be evident that Congress believed it was acting under the clause of the Constitution which authorizes it to regulate commerce among the States. So if, when the trade mark has been registered, Congress had protected its use on goods sold by a citizen of one State to another, or by a citizen of a foreign State to a citizen of the United States, it would be seen that Congress was at least intending to exercise the power of regulation conferred by that clause of the Constitution. But no such idea is found or suggested in this statute. Its language is: "Any person or firm domiciled in the United States, and any corporation created by the United States, or of any State or Territory thereof," or any person residing in a foreign country which by treaty or convention affords similar privileges to our citizens, may by registration obtain protection for his trade mark. Here is no requirement that such person shall be engaged in the kind of commerce which Congress is authorized to regulate. It is a general declaration that anybody in the United States, and anybody in any other country which permits us to do the like, may, by registering a trade mark have it fully protected. So, while the person registering is required to furnish "a statement of the class of merchandise, and the particular description of the goods comprised in such class, by which the trade mark has been or is intended to be appropriated," there is no hint that the goods are to be transported from one State to another, or between the United States and foreign countries. (Trade Mark Cases, 100 U. S., pp. 82, 97.)

Therefore, a general act of Congress relating to the registration, use, and protection of trade marks must, in order to be valid, be limited in its provisions to their use in commerce with foreign nations, or among the several States, or with the Indian tribes. From the foregoing it would seem to follow that a trade mark act of the legislature of a State or of a territorial possession that does not on its face, or from its essential nature, relate to the use of trade marks in commerce with foreign nations, among the several States or with the Indian tribes, if otherwise valid, is a regulation of the internal commerce of the State or territorial possession enacting such law; but such a law cannot, in my opinion, be applied to the regulation of commerce with foreign nations, or among the several States, or with the Indian tribes.

After the Supreme Court of the United States, in the Trade Mark Cases (100 U. S., pp. 82-99), declared the Acts of July 6, 1870, and August 14, 1876, in their relation to trade marks, to be unconstitutional and void, because not limited to trade marks used in commerce with foreign nations, or among the several States, or with the Indian tribes, Congress passed the trade mark act of March 3, 1881, which is limited to the registration and protection of trade marks "used in commerce with foreign nations or with the Indian tribes," and whose owners were "domiciled in the United States, or located in any foreign country or tribes which by treaty, convention or law, affords similar privileges to citizens of the United States." (21 Stat. at L., p. 502.)

Said Act of March 3, 1881, seems to have been the trade mark law of the United States until the passage of the Act of February 20, 1905, entitled "An Act to authorize the registration of trade marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same." (33 Stat. at L., p. 724.) Section 1 of said Act was amended by Act of Congress of May 4, 1906, (34 Stat. at L., pp. 168, 169), and sections 5 and 6 were amended by Act of Congress of March 2, 1907, (34 Stat. at L., p. 1251).

In section 29 of said Act of February 20, 1905, Congress provided as follows:

That in construing this Act the following rules must be observed, except where the contrary intent is plainly apparent from the context thereof: The United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word "States" includes and embraces the District of Columbia, the Territories of the United States, and such other territory as shall be under the jurisdiction and control of the United States.

Said section 29 plainly manifests the intention of Congress that said Act should be applicable in the Philippine Islands, and under section I of the Act any trade mark owner "domiciled within the territory of the United States" is

entitled to the benefit of the provisions of the Act. Said section 1, as amended by said Act of May 4, 1906, is as follows:

That the owner of a trade mark used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled within the territory of the United States or resides in or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade mark by complying with the following requirements: First, by filing in the Patent Office an application therefor, in writing, addressed to the Commissioner of Patents, signed by the applicant, specifying his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade mark is appropriated; a description of the trade mark itself (only when needed to express colors not shown in the drawing), and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade With this statement shall be filed a drawing mark has been used. of the trade mark, signed by the applicant, or his attorney, and such number of specimens of the trade mark, as actually used, as may be required by the Commissioner of Patents. Second, by paying into the Treasury of the United States the sum of ten dollars, and otherwise complying with the requirements of this Act and such regulations as may be prescribed by the Commissioner of Patents.

Section 27 of said Act of Congress provides as follows:

That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade mark registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any custom-house of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

It has been noted that section 29 of said Act manifests the intention of Congress to make the Act applicable to all territory under the jurisdiction and control of the United States; however, said Act provides but one mode of registration, and there is no provision in the Act that registration of a trade mark in a State or Territory, or in a territorial possession like the Philippine Islands, shall be sufficient to entitle the owner thereof to protection under said Act of Congress; but the owner of a trade mark entitled to the advantages of said section 27, above quoted, is expressly authorized by said section to have recorded in the Department of the Treasury, among other information, "a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of this Act." Therefore, the owner of such a trade mark, to avail himself of the privileges of said section, so far as his trade mark is concerned, must register the trade mark with the Commissioner of Patents before it can be recorded in the Department of the Treasury. Said section 27 is in terms applicable only with respect to goods and trade marks copied or simulated in importations from a foreign country, and, as above observed, said Act No. 666 of the Philippine Commission does not show on its face, either in its title or in its provisions, except by mere inference or deduction, that it is a regulation of commerce with foreign nations, and it has no provision on the subject of said section 27; hence, there is no inconsistency between the Act of the Commission and the Act of Congress in relation to the provisions of said section 27, and no reason appears for not applying and enforcing that section in the Philippine Islands; indeed, domestic manufacturers, that is, manufacturers in the Philippines and other territory of the United States, cannot be protected in the Philippine Islands against the evil sought to be avoided by the provisions of said section, except by suits for damages, unless said section is applicable and enforceable in these Islands.

On March 21, 1905, soon after the passage of said Act of Congress on the subject of trade marks used in foreign commerce. etc., the Secretary of the Treasury issued his Circular No. 40, published as Treasury Decision No. 26198, addressed to Collectors of Customs and others concerned, and in said circular invited attention to the provisions of section 27 of the Act of February 20, 1905, above quoted, and after quoting said section 27 the circular continues as follows:

The provisions of this section give to manufacturers and traders located in foreign countries, which, by treaty stipulations, give similar privileges to the United States, the same advantages as are given to domestic manufacturers and traders. The act does not affect names or trade marks heretofore recorded in the Treasury Department, and as to them the protection granted so far as concerns prohibition or importation will continue. Nor does the act appear to make it compulsory on the part of domestic manufacturers or traders, or foreign manufacturers or traders, to register names (not trade marks) with the Commissioner of Patents, in order to prevent illegal importations.

Domestic manufacturers and traders, and foreign manufacturers and traders, to avail themselves of the privileges of the act, so far as concerns trade marks are required to register their trade marks with the Commissioner of Patents before the Treasury Department can act.

Applications for recording the names and trade marks in this Department under section 27 will state the name of the owner, his residence,

and the locality in which his goods are manufactured, and in the case of trade marks should be accompanied with a certified copy of the certificate of registration of his trade mark, issued in accordance with the provisions of the act, and the names of the ports to which facsimiles should be sent. In the case of the name of a domestic manufacture, manufacturer or trade (not registered as a trade mark in the Patent Office), the application must be accompanied by the proper proof of ownership and proof as to the country or locality in which his goods are manufactured, which must consist of the affidavit of the owner, or one of the owners, certified by an officer entitled to administer oaths and having a seal.

On the receipt by a custom officer of any such facsimiles, with information from the Department that they have been recorded therein, he will properly record and file them, and will exercise care to prevent the entry at the custom-house of any article of foreign manufacture copying or simulating such mark.

No fees are charged for recording trade marks in the Treasury Department and custom-houses.

A sufficient number of facsimiles should be forwarded to enable the Department to send one copy to each port named in the application, with ten additional copies for the files of the Department.

Especial attention is invited to the provision in said section prohibiting the entry of articles "which shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured," and collectors and other officers of the customs are instructed to use due diligence to prevent violations of this provision.

The provisions of the act also apply to Porto Rico, the Philippine Islands, Hawaii, and any other territory under the jurisdiction and control of the United States.

After the foregoing construction was placed upon the provisions of said Act, especially in relation to section 27 thereof, the Commissioner of Patents, under date of May 26, 1905, raised the question with the Bureau of Insular Affairs at Washington as to the scope of said Act in relation to the registration of trade marks in the Philippine Island, and the matter was referred to the Law Officer of that Bureau for an opinion. The Law Officer rendered his opinion under date of June 2, 1905, and, after quoting the various provisions of law deemed necessary to the discussion of the question involved, stated the proposition to be determined as follows:

"As will be seen by an examination and comparison of the latest act of Congress and of the Philippine Acts, they are apparently in conflict and it therefore becomes necessary to apply to this legislation the tests for the interpretation of statutes, so that differences, apparently irreconcilable, may be accommodated, if possible, and if not, we may arrive at a conclusion as to which of said acts is of controlling force with regard to the registration of trade marks in the Philippine Islands."

After a discusion of the authorities and certain provisions of the law in question, the Law Officer concluded his opinion as follows:

"So that considered from every aspect, I am of opinion that, in spite of the broad phraseology contained in section 29 of the Act of February 20,

1905, and of the definition of territory apparently embracing all territory under the jurisdiction and control of the United States, it was not the intention of the legislature by such definition, and the repealing clause, (section 30), to abrogate or modify the Acts of the Philippine Government (Nos. 666 and 803); that the provisions of the Philippine Acts are self-operative and exclusive, and that the regulations therein prescribed must be complied with, rather than those of the Act of February 20, 1905, for the protection of rights covered by said Acts."

This opinion of the Law Officer of the Bureau of Insular Affairs was approved by the Secretary of War, and, therefore, would appear to be authoritative and binding upon the administrative officers of the Philippine Government.

I fully concur in said opinion in so far as it holds that it was not the intention of Congress to abrogate or modify the Philippine Trade Mark Act, but am constrained to differ therefrom in so far as it seems to hold that said Philippine Act is applicable in the registration and protection of trade marks for use in Commerce with foreign nations, and among the several States, and with the Indian tribes, to the exclusion of the Act passed by Congress on that subject, for the reason that Congress passed said Act pursuant to its constitutional power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," and expressly made the Act applicable to all the territory under the jurisdiction and control of the United States.

The said Act of Congress was drafted and passed in conformity to the decision of the Supreme Court of the United States in the Trade Mark Cases, above cited, and shows in its title and in its express provisions that it only applies to the registration and protection of trade marks used in commerce with foreign nations and among the several States and with the Indian tribes, and has nothing to do with the registration or protection of trade marks used exclusively in the internal commerce of a State, Territory, or territorial possession; and, according to the reasoning of the Supreme Court in the decision of the Trade Mark Cases, said Act No. 666 of the Philippine Commission is no more than a local trade-mark law relating to the registration and protection of trade marks used in the internal commerce of the Philippine Islands.

It is therefore respectfully submitted that under the plain provisions of the law and the decision of the Supreme Court in the Trade Mark Cases, said opinion is erroneous in its conclusions in so far as they are based upon the proposition that the Act of Congress and the Act of the Philippine Commission are substantially identical in their purposes and conflicting in their provision.

The Law Officer of the Bureau of Insular Affairs further says in his opinion that the courts specified in said Act of Congress, as having jurisdiction to try and determine questions arising under it, are courts peculiar to the United States, and not such courts as have been erected and are in operation in the Philippine Islands. Section 17 of said Act of Congress says:

That the circuit and territorial courts of the United States and the supreme court of the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the court of appeals of the District of Columbia shall have appellate jurisdiction of all suits at law or in equity respecting trade marks registered in accordance with the provisions of this Act, arising under the present Act, without regard to the amount in controversy.

I am of the opinion that the use of the words "territorial courts of the United

States," in connection with the definition of the words "United States" in section 29 of said Act, shows conclusively that the legislators had in mind that said Act was to be applicable and enforceable in all the territory under the jurisdiction and control of the United States and intended that the words "territorial courts" should mean the courts of the territorial possessions of the United States. Even if there were no territorial courts in the Philippine Islands with jurisdiction to protect property rights in registered trade marks used in foreign commerce, still under the provisions of said Act of Congress the Supreme Court of the District of Columbia would have original jurisdiction, and the Court of Appeals of the District of Columbia would have appellate jurisdiction, of all suits arising under said Act, at law or in equity, respecting trade marks registered in accordance with the provisions of said Act, without regard to the amount in controversy.

It should be noted that a bureau, division or office in the Philippine Islands, subordinate to the Commissioner of Patents at Washington, is not necessary to the application and enforcement of said Act of Congress in the Philippine Islands. The provisions of the Act do not contemplate that there shall be a Trade Mark office or personnel in each of the several States, Territories, and territorial possessions of the United States for the enforcement of the Act, and such an office is no more necessary in the Philippine Islands than it is in New Mexico, and it does not appear from said Act to be necessary in either place. If the owner of a trade mark used or to be used in foreign or interstate commerce is domiciled in the Philippine Islands, and desires to avail himself of the privileges of said Act for the registration and protection of such trade mark, he would be required to file in the Patent Office at Washington an application therefor, in writing, addressed to the Commissioner of Patents, giving the information required by section I of said Act of Congress, and otherwise complying with the provisions of said Act and the regulations prescribed by the Commissioner of Patents, in the same manner and to the same extent as the owner of such a trade mark would be required to do if he were domiciled in California, New Mexico, Alaska, or in a foreign country; and, after such registration, if he desires to avail himself of the privilege of aiding the customs officers in keeping out importations which copy or simulate his goods or trade mark, by having a record thereof made in the Department of the Treasury, he must file in said Department, with other information as provided in section 27, above quoted, a copy of the certificate of registration of his trade mark, issued in accordance with the provisions of said Act of Congress.

I am therefore of the opinion that when a trade mark is registered in a foreign country like England, a member of the International Union for the Protection of Industrial Property, for use on goods manufactured in that country, and the owner of the trade mark imports such goods into the Philippine Islands as territory under the jurisdiction and control of the United States, a member of such International Union, and the importer of such goods with said trade mark thereon desires protection against importations which copy or simulate his trade mark, the registration thereof in the Division of Archives, Patents, Copyrights and Trade Marks, in Manila, is not sufficient to authorize the Insular Collector of Customs to exclude importations which copy or simulate such trade mark; but to authorize the Insular Collector of Customs to exclude such imitations, the foreign trade mark so imitated must be duly registered in the Patent Office at Washington, D. C., under the provisions of the Act of Congress of February 20, 1905, regulating the registration and use of trade marks in

commerce with foreign nations; and, in the absence of some administrative regulation to the contrary, I am of the opinion that a proper mode of proving such registration in the Patent Office at Washington would be to submit to the Insular Collector of Customs a copy of the certificate of registration of the trade mark, certified by the Commissioner of Patents in accordance with the provisions of section 27 of said Act of Congress of February 20, 1905.

Respectfully,

(Signed) G. R. HARVEY, Solicitor General.

To the Executive Secretary.

Approved:

(Signed) IGNACIO VILLAMOR, Attorney General.

#### United States.

Unfair Foreign Competition Against American Industries. Proposed Repressive Recommendations.

Many inquiries have been received by the Bureau of Foreign and Domestic Commerce as to the prevention of unfair foreign competition against the new American industries established during the war. In view of this the Secretary of Commerce has addressed the following letter to the chief of this Bureau:

If the question arises as to the attitude of the Department of Commerce toward what is called "dumping" after the war shall end, you may say that I shall recommend in my annual report that unfair competition from abroad shall not be permitted to injure a legitimate American industry any more than it is permitted to do so in our domestic field. Especially I shall oppose action on the part of any foreign monopoly toward controlling the American market by unfair competition in an attempt to injure or destroy an American industry. There is no doubt in my mind that this should be done. The more serious question to which consideration is being given is as to the method of doing it. Various plans have been proposed, some of which seem to permit reactions which are possibly undesirable. I am considering the methods used in different countries, with a frank preference for such as have nothing to do with tariffs or duties. I should be very glad to receive suggestions from practical commercial men as to the most efficient means of detecting and preventing this unfair competition.

You may be quite sure of my earnest purpose to provide, so far as it lies in my power to do so, that American industries shall not suffer from a type of unfair competition at the hands of foreign producers which would be forbidden if it took place at the hands of American producers.

There is no reason why you should not make known this expression of my views.

Yours very truly, (Signed) WILLIAM C. REDFIELD.

Dr. E. E. PRATT,

Bureau of Foreign and Domestic Commerce, 409 Custom House, New York, N. Y. (From Commerce Reports, No. 229, Sept. 30, 1915.)



## United States Practice.

Design Patents. 208 O. G., 603

Commissioner's Decisions.
Ex parte Klemm and Schreiber.

Decided May 4, 1915.

DESIGN-MOVABLE PARTS.

Where a chair has relatively fixed seat, arms, and legs and an adjustable back, book-rest, etc., *Held* that a design patent should not be refused simply because it has moving parts.

ON PETITION.

COMBINATION STUDY-CHAIR.

Messrs. Robb & Robb for the applicants.

NEWTON, First Assistant Commissioner:

This is a petition from the rejection by the Examiner of a design claim for a chair having relatively fixed seat, arms, and legs, but an adjustable back, bookrest, etc., the refusal being based on the ground that the device covered has relatively moving parts.

The rejection is appealable to the Board of Examiners-in-Chief; but since the Examiner has joined with applicants in requesting a ruling on this point the petition will be considered on its merits.

I find a divergence in the trend of recent decisions of the Patent Office and those of the courts on this point. Symons on Patents for Designs, page 29, correctly gives the substance of the Office decisions as follows:

In ex parte Smith (81 O. G., 969; 1897, C. D., 170) it was decided that an atomizer was not proper subject matter for protection under the design statute because of the presence of movable parts which when moved changed the appearance of the device. It apparently was the view of the Commissioner that if the movable handle was removed it would not be objectionable as presented and a patent was subsequently issued on this application for an atomizer body. (Design Patent No. 30,293, De Wane B. Smith.) In the case of ex parte Tallman (82 O. G., 337; 1898, C. D., 10) a design patent for a can opener was refused on the ground that the knife forming a part of it was a movable part and when shifted the shape or contour of the article was changed. A patent for a can opener body was subsequently issued on this application. (Design Patent No. 28,232, Tallman.) A pair of tongs consisting of two members of the same shape pivoted together is an operative device and not within the purview of the design laws. (Kapp, 83 O. G., 1993; 1898, C. D., 108.) In this case the Commissioner stated:

"If applicants have invented and produced anything that is novel, it is not a pair of tongs, but the shape or configuration of a member or jaw of a pair of tongs. The description and claim should be limited to this."

In the case of ex parte Adams (84 O. G., 311) and ex parte Steck (98 O. G., 228) a design for truck side frames and for a frame for water towers, respectively, were held not patentable in that they were apparatuses having movable parts.

On the other hand, Judge Brown in Chandler Adjustable Chair and Desk Co. v. Heywood Bros, et al. (91 Fed. Rep., 163) in passing on Designs Patent No. 27,-272 held:

The broad proposition advanced by the defendant, that section 4929 of the Revised Statutes was not intended to apply to structures having movable parts, is not supported by the citation of any judicial decision; and, though certain rulings of the Patent Office (ex parte Tallman, 82 O. G., 337; ex parte Adams, 84 O. G., 311; ex parte Smith, 81 O. G., 969; ex parte Brower, 1873, C. D., 151) are presented to support this proposition, I am of the opinion that such a construction of the statute calls for an unwarranted and unreasonable limitation of the terms "manufacture" and "any article of manufacture," and leads to absurd and unjust results. For example, such a construction would defeat claims like those in Burton v. Town of Greenville (3 Fed., 642) and Britton v. Manufacturing Co., (61 Fed., 94).

The design statute, section 4929, provides that-

any person who has invented any new, original, and ornamental design for an article of manufacture, \* \* \* may obtain a patent therefor.

There seems to be no good reason for laying down a hard and fast rule that design patents-cannot be granted to cover devices with relatively movable parts. It is a well known fact, for example, that carriage, buggy, and automobile builders are constantly striving to produce graceful and pretty designs for carriages, buggies, and automobiles as entireties, including the wheels. Pump-makers exercise as much invention in producing new and artistic designs for pumps, including their relatively movable handles, as do stoneworkers in producing new designs for tombstones. According to sound principles of construction, the design statute should not be so construed as to deny protection to the former, and extend it to the latter unless its terms are clearly to that effect, and they are not.

It is always easier to practise by rules than by the spirit of a statute; but the latter produces more equitable results, and there are no great obstacles in applying the spirit of the design and mechanical sections of the patent statutes to inventions as they are presented to determine whether they fall under one statute or the other. The patentable characteristics of a design protectable under section 4929 are found weighed and valued by the test of ornament. Those of a mechanical device protectable under section 4886 are recognized by what they contribute to the performance of the function of that device, and the Office should only grant design patents for the former and mechanical patents for the latter unless the device includes both ornamental and useful characteristics, in which case probably both design and mechanical patents may be granted for the same device, just as in some cases separate patents may be granted for a machine and a process practised through the instrumentality of the machine or as separate patents may be granted for a process and its product. (Ex parte Knothe, 102 O. G., 1294; 1903, C. D., 42.)

It has been urged that design patents should not be granted on devices with movable parts because those parts may conceivably be so moved as to produce another design. Admitting this to be true, it is only an apparent and not a substantial reason against this practice, for a design patent only purports to cover the device as shown. The decisions are uniform to the effect that modifications must not be illustrated, but patentees must leave to the courts to say what are modifications. (Ex parte Remington, 114 O. G., 761; 1905, C. D., 28.) Similarly, it should be left for the courts to determine when relative movement of the parts of a design produces a different design.

In the present case I can see no good reason for refusing a design patent on applicants' chair merely because its back may be raised or lowered or the booksupport relatively moved, or even that the parts may be so moved as to produce a different design. It may be, however, that these relatively movable parts are intended primarily to produce a useful result as distinguished from an aesthetic result, and if so the chair should be the subject of a mechanical patent instead of a design patent. I only decide at this time that simply because it has moving parts should not preclude the grant therefor of a design patent, and to the extent indicated the petition is granted.

#### Patents.

220 O. G., 1375.

Commissioner's Decision.

EX PARTE AYERS.

Decided March 3, 1915.

CONTINUING APPLICATION—CROSS-REFERENCE TO ORIGINAL CASE.

Where an application is stated to be a division of a co-pending application, but contains a slight modification of the former case, *Held* that this inaccuracy may be corrected by canceling the statement that the present case is a division of the former, or by making it a true division of the former, or by substituting a statement that it is a continuation of the former as to all matter common to the two applications.

ON PETITION.

#### LOCOMOTIVE-STOKER.

Mr. Chas. C. Linthicum for the applicant.

NEWTON, First Assistant Commissioner:

This is a petition from the Examiner's action refusing to allow applicant to change this specification and drawing to make it a true division of his co-pending application, No. 769,840.

Applicant states that in preparing the drawings for the present case a slight modification was inadvertently made in the form of the end of the conveyer and points out that he now wishes to make this form exactly as shown in his parent case.

When applicant stated in his original application that this was "a division of my application Serial No. 769,840," he in effect stated that there should not be anything disclosed herein that was not disclosed in his parent case. (See ex parte Henry, 64 O. G., 299.) It was inaccurate therefore to say that this was a division of his prior case and at the same time disclose matter that was not disclosed in the parent case. There were two ways of correcting this inaccuracy—one by canceling the statement that the present was a division of the former case and the other by making the present a proper division of the former case. Applicant has chosen this latter way of correcting the inaccuracy, and it is believed that he should be allowed to do so.

The Examiner also suggests that there would be no objection to applicant's stating that this is a continuation of his prior application as to all matter common to the two applications, and, if he so desires, applicant may adopt this suggestion.

The petition is granted.



#### Patents.

220 O. G., 1043.

EX PARTE LEVY.

Decided October 23, 1914.

I. ABANDONMENT-PIECEMEAL ACTIONS BY THE OFFICE.

Piecemeal actions by the Office *Held* inconsistent with a strict application of the rule of prompt prosecution by the applicant.

2. SAME—CASE SUBSTANTIALLY READY FOR FINAL ACTION—NO AMENDMENT OF CLAIMS PERMITTED.

Where it appeared that the case was in condition for allowance or final rejection, except for the possible filing of further affidavits by the applicant, *Held* that no further amendment of the claims would be allowed without express authority of the Commissioner.

ON PETITION.

#### ETCHING APPARATUS.

Mr. Eugene W. Johnson for the applicant.

EWING. Commissioner:

This application was filed in January, 1911, and was prosecuted diligently until August of that year. On August 12 there was a rejection, to which reply was not made for nearly a year, and again on August 13, 1912, a rejection, to which reply was not made for nearly a year. On August 28, 1913, a third rejection was made, and the character of the reply made on August 22, 1914, caused the Examiner to hold the case abandoned.

The first three Office actions required division and partially developed the art. The fourth Office action indicated that claims 2, 3, and 6 were allowable, the other claims being rejected principally on a newly-cited patent to Johnston. In the Office action of August 13, 1912, all the claims were rejected, a new patent to Spitzer being added to the record, and in the action of August 28, 1913, the claims were again rejected, the German patent to Chavkin being added to the record.

This piecemeal presentation of the art was of course annoying to the applicant and is not consistent with an attempt to hold the applicant strictly to the rule of prompt prosecution. I think the holding of abandonment was not warranted. The case will be restored and the affidavit on file will be entered. The applicant is given one month from date to file any further affidavits he may desire to file to overcome the Johnston Patent. The case will then be in condition for allowance or final rejection, as the applicant is already notified of all the art which the Examiner is able to find against the application.

No amendment of the claims will be permitted to be presented with the affidavit unless express authority is obtained from the Commissioner.

The petition is granted.

# Adjudicated Patents.

No. 813,815. McIntosh. Rotary engine. Held void for anticipation and prior use. 219 F. R., 899.

No. 896,365. Ernst. And No. 900,062. Ernst. Gas-cleaner apparatus; and process for cleaning gases. Held infringed. 219 F. R., 898.



No. 869,010. Van Ormer. Rotary motor. Held void for anticipation and prior use. 219 F. R., 899.

No. 1,019,771. Elliott, Mills and Holt. Rotary motor, as to certain features. Held void for anticipation and not infringed. 219 F. R., 899.

No. 1,039,355. Boss. Grass-collector for lawn-mowers. Held void for anticipation. 219 F. R., 887.

No. 1,045,134. Elliott. Rotary motor, as to certain features. Held void for anticipation and not infringed. 219 F. R., 899.

No. 1,053,055. Mills and Conn. Rotary motor. Held (claim 10) void for anticipation. 219 F. R., 899.

No. 12,611 (reissue). Sturtevant. And No. 1,063,148. Anderson. Each for a carbureter. Held valid, but not infringed. 220 F. R., 154.

No. 12,796 (reissue) (Original No. 662,395). Davidson. Centrifugal fan or pump. Held void for anticipation and also not infringed. 220 F. R., 137.

No. 586,076. Rose. Tobacco-packing machine. Held valid and infringed. 220 F. R., 163.

No. 644,464. Rowley. Artificial-limb suspender. Held valid and infringed. 220 F. R., 127.

No. 668,175. Froslid. Grain separator. Held (claim 1) infringed. 220 F. R., 150.

No. 684,662. Ahara. Carbureter. And No. 791,501. Richard. Improvement thereon. Held (both) valid and infringed by two forms of defendant's carbureters, but not infringed by a third. 220 F. R., 154.

No. 684,751. Froslid. Grain-separator. Held (claim 1) infringed. 220 F. R., 150.

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Vol. 14

# **JANUARY**, 1916

No. 4

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# Patent and Trade Mark Review

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A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

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# Tunis (France).

Industrial Property. War Measures. Extension of the French Law of May 27, 1915, to Tunis. Decree of Aug. 28, 1915.

By decree of Aug. 28, 1915, the French "war measure" law of May 27, 1915, (for translation of which see 13 P. & T. M. Rev., 296), was extended to Tunis. The text of this decree appears in full in La Propriété Industrielle for Oct., 1915.

# Algiers (France).

Designs. Models. Extension of French Law of July 14, 1909, and Decree of June 26, 1911, to Algiers. Decree of March 18, 1915.

In the issue of Sept. 30, 1915, of La Propriété Industrielle, appears the text of the decree of March 18, 1915, whereby the French law of July 14, 1909,\* and decree of June 26, 1911,† both concerning designs and models, is extended to Algiers without change, save the following provision:

"Art. 2. The term of eight days provided in Art. 14, second paragraph, of the decree of June 26, 1911, for the full payment of the tax provided by paragraph 2 of Art. 8 of the law of July 14, 1909, is extended to fifteen days."

# Luxemburg.

Patents. Taxes. No Specal War Measures. Practice.\*

According to a communication from the Government of the Grand Duchy of Luxemburg, special facilities for the payment of patent taxes have not yet been granted through legislation in this country, by reason of the present state of war. The reason for this is that ordinances promulgated to this end would necessarily have presented great deficiencies and would not have been able to foresee all the cases that have arisen.

In practice, however, patents are treated in such a fashion that they are not declared void, even when the taxes are not paid within the term of three months. The State receivers accept all payments for taxes that are made, even those that are effected after the expiration of this term, and, since the commencement of the war, the Patent Office has declared void only those patents for which the tax had not been paid prior to Aug. 1, 1914.

After the war, this question will be adjusted in a definitive manner. There will be determined a term wherein taxes due may yet be paid, and it is only after this term that the competent authorities will declare the maintenance in force or the avoidance of patents. (From a report of the Imperial German Embassy at Luxemburg summarized in Markenschutz und Wettbewerb, Nov. 1, 1915, republished in La Propriété Industrielle, Nov., 1915.)

Committee of the section

<sup>\*</sup> For translation see 8 P. & T. M. Rev., 2929. † For translation see 10 P. & T. M. Rev., 3925.

<sup>\*</sup> For decision on same subject see 13 P. & T. M. Rev., 357.

# Italy.

Industrial Property. War Measures. Reciprocal Benefits to British and French Subjects. Decree of Sept. 25, 1915.

(Translation.)

MINISTERIAL DECREE RECOGNIZING THE APPLICABILITY TO FRENCH SUBJECTS, ENGLISH SUBJECTS, AND THEIR LIKE, OF THE PROVISIONS APPROVED BY THE TEMPORARY ROYAL DECREE OF JUNE 20, 1915, No. 962, CONCERNING THE EXTENSION OF TERMS IN INDUSTRIAL PROPERTY MATTERS.

THE MINISTRY OF AGRICULTURE, INDUSTRY, AND COMMERCE,

In view of the temporary decree of June 20, 1915, No. 962,\* concerning the extension of terms in industrial property matters;

In view of the communications of date Aug. 27, 1915, of the English Government, and of Aug. 31, of the Government of the French Republic;

Having seen that the conditions required by Art. 3 of the temporary decree, for extending to owners of patents that belong to foreign States the benefits therein provided, are satisfied as regards Great Britain and France;

On the proposition of the Inspector General of Industry;

Decrees:

The benefits provided in Art. 2 of the temporary decree of June 20, 1915, No. 962, concerning the extension of the terms for the payment of taxes and for the fulfillment of acts prescribed for the purpose of maintaining in force industrial patents or requesting their prolongation, are applicable to English subjects, French subjects and to their like.

The present decree shall be published in the Gazzetta ufficiale of the Kingdom along with the communications concerning applications of the English and French Governments.

Rome Sept. 25, 1915.†

(Signed) The Minister,

CAVASOLA

(From 15 Bollettino della proprietà intellettuale, Fasc. 15 & 16, p. 205.)

# Great Britain.

Patents. Working. Patents and Designs Act (Partial Suspension) Act, 1915.

Chapter 85.

AN ACT TO SUSPEND THE OPERATION OF SECTION TWENTY-SEVEN OF THE PATENTS AND DESIGNS ACT, 1907, DURING THE CONTINUANCE OF THE PRESENT WAR, AND FOR A PERIOD OF SIX MONTHS THEREAFTER. (23rd November, 1015.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. The operation of section twenty-seven of the Patents and Designs Act, 1,307,\* shall be suspended during the continuance of the present war, and a period



<sup>\*</sup> For translation of this decree see 14 P. & T. M. Rev., 7. † Published in the Gazzetta ufficiale, Oct. 5, 1915, No. 245.

<sup>\*</sup> See 6 P. & T. M. Rev., 2273.

of six months thereafter, and in reckoning the period of four years mentioned in the said section the period during which that section is suspended by virtue of this Act shall not be taken into account.

2. This Act may be cited as the Patents and Designs Act (Partial Suspension) Act, 1915. (From Illustrated Official Journal (Patents), Dec. 15, 1915.)

### United States.

Industrial Property. Patent Office Procedure. Rules of Practice. Amendments. Effective Jan. 1, 1916.

221 O. G., 1453.

AMENDMENTS TO THE RULES OF PRACTICE.

DEPARTMENT OF THE INTERIOR.

United States Patent Office.

Washington, D. C., December 22, 1915.

The Honorable the Secretary of the Interior.

SIR: Acting under the provisions of section 483 of the Revised Statutes and with your approval I propose to amend the Rules of Practice in the United States Patent Office as follows, to take effect January I, 1916:\*

By consolidating Rules 7 and 8, so that the rule numbered 7 will read as follows:

7. When an attorney shall have filed his power of attorney, duly executed, the correspondence will be held with him.

A double correspondence with the inventor and an assignee, or with a principal and his attorney, or with two attorneys, cannot generally be allowed.

By renumbering Rules 9, 10, 11 and 12 as 8, 9, 10, and 11.

By substituting for Rule 13 the following:

12. Mail reaching the post-office at Washington, D. C., up to 4:30 p.m. on week-days, excepting holidays, and I p.m. on half-holidays is entered as received in the Patent Office on the day it reaches the post-office.

Special-delivery letters and other papers may be deposited in a box provided at the watchman's desk at the F. street entrance of the Patent Office up to midnight and all papers deposited therein are entered as received in the Patent Office on the day of deposit.

Letters received at the Office will be answered, and orders for printed copies filled, without unnecessary delay. Telegrams, if not received before 3 o'clock p.m., cannot ordinarily be answered until the following day.

By inserting as Rule 13 present Rule 152, so that the rule will read as follows:

13. Interviews with Examiners concerning applications and other matters pending before the Office must be had in the Examiners' rooms at such times, within office hours, as the respective Examiners may designate; in the absence of the Primary Examiners, with the assistant in charge. Interviews will not be

<sup>\*</sup>Proposed Rule 15, as published in the Official Gazette of November 9, 1915, has not been adopted. Proposed Rules 29, 31, 39, 42, 46, 47, 48, 50, 51, 56, 63, 66, 70, 78, 82, 85, 87, 94, 95, 109, 110, 119, 122, and 130 have been further modified. Amendments have also been made to Rules 21, 24, 30, 54, 92, and 123.



permitted at any other time or place without the written authority of the Commissioner. Interviews for the discussion of pending applications will not be had prior to the first official action thereon.

By canceling in Rule 15 the reference to caveats, so that the rule as amended will read as follows:

15. Pending applications are preserved in secrecy. No information will be given without authority respecting the filing by any particular person of an application for a patent or for the reissue of a patent, the pendency of any particular case before the Office, or the subject-matter of any particular application, unless it shall be necessary to the proper conduct of business before the Office, as provided by Rules 97, 103, and 108.

By canceling the words "of an undivided interest" in line 7 of Rule 20, so that the rule as amended will read as follows:

20. Powers of attorney may be revoked at any stage in the proceedings of a case upon application to and approval by the Commissioner; and when so revoked the Office will communicate directly with the applicant, or such other attorney as he may appoint. An attorney will be promptly notified by the docket clerk of the revocation of his power of attorney. An assignment will not operate as a revocation of the power previously given; but the assignee of the entire interest may be represented by an attorney of his own selection.

By substituting for the word "hereinafter" in line 4 of Rule 21 the word hereinbefore and for "Rule 152" the words Rule 13, so that the rule as amended will read as follows:

21. Parties or their attorneys will be permitted to examine their cases in the attorneys' room, but not in the rooms of the Examiners. Personal interviews with Examiners will be permitted only as hereinbefore provided. (See Rule 13.)

By inserting in line 10 of Rule 24 after the word "filed" the words by him or his legal representatives or assigns, so that the rule as amended will read as follows:

24. A patent may be obtained by any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application, and not patented in a country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months before his application, and not in public use or on sale in the United States for more than two years prior to his application, unless the same is proved to have been abandoned, upon payment of the fees required by law and other due proceedings had. (For designs see Rule 79.)

By canceling Rule 29 and substituting therefor the following:

29. No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months prior to the filing of the application in this country, in which case no patent shall be granted in this country.

An application for patent filed in this country by any person who has prev-

iously regularly filed an application for a patent for the same invention or discovery in a foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States shall have the same force and effect as the same application would have if filed in this country on the date on which the application for patent for the same invention or discovery was first filed in such foreign country, provided the application in this country is filed within twelve months from the earliest date on which any such foreign application was filed; but no patent shall be granted upon such application if the invention or discovery has been patented or described in a printed publication in this or any foreign country, or has been in public use or on sale in this country, for more than two years prior to the date of filing in this country.

By canceling in line 3 of Rule 30 the words "if alive" and substituting therefor the words or by one of the persons indicated in Rule 25 and by canceling in lines 5 and 6 the words "model or specimen" and canceling the numbers "56, 62" in line 6, so that the rule as amended will read as follows:

30. Application for Letters Patent of the United States must be made to the Commissioner of Patents, and must be signed by the inventor, or by one of the persons indicated in Rule 25. (See Rules 26, 33, 40, 46.) A complete application comprises the first fee of \$15, a petition, specification, and oath; and drawings, when required. (See Rule 49.) The petition, specification and oath must be in the English language. All papers which are to become a part of the permanent records of the Office must be legibly written or printed in permanent ink.

By canceling Rule 31 and substituting therefor the following:

31. An application for a patent will not be placed upon the files for examination until all its parts as required by Rule 30 are received.

Every application signed or sworn to in blank, or without actual inspection by the applicant of the petition and specification, and every application altered or partly filled up after being signed or sworn to, will be stricken from the files.

Completed applications are numbered in regular order, the present series having been commenced on the 1st of January, 1915.

The applicant will be informed of the serial number of his application.

The application must be completed and prepared for examination within one year, as indicated above, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action thereon (Rule 77), of which notice shall have been duly mailed to him or his agent, the application will be regarded as abandoned, unless it shall be shown to the satisfaction of the Commissioner that such delay was unavoidable. (See Rules 171 and 172.)

By substituting in the last line of Rule 33 for the word "applicant" the words inventor or one of the persons indicated in Rule 25, so that the rule as amended will read:

33. The petition must be addressed to the Commissioner of Patents and must state the name, residence and post-office address of the petitioner requesting the grant of a patent, designate by title the invention sought to be patented, contain a reference to the specification for a full disclosure of such invention, and must be signed by the inventor or one of the persons indicated in Rule 25.

By omitting section (7) of Rule 39 and by substituting in section (6) for the word "inventor" the word applicant, so that the rule as amended will read as follows:

- 39. The following order of arrangement should be observed in framing the specification:
  - (1) Preamble stating the name and residence of the applicant and the title of the invention.
  - (2) General statement of the object and nature of the invention.
  - (3) Brief description of the several views of the drawings (if the invention admits of such illustration).
  - (4) Detailed description.
  - (5) Claim or claims.
  - (6) Signature of applicant.
  - By substituting for Rule 40 the following:
- 40. The specification must be signed by the inventor or one of the persons indicated in Rule 25. Full names must be given, and all names must be legibly written.

By substituting for Rule 42 the following:

42. If several inventions, claimed in a single application, be of such a nature that a single patent may not be issued to cover them, the inventor will be required to limit the description, drawing, and claim of the pending application to whichever invention he may elect. The other inventions may be made the subjects of separate applications, which must conform to the rules applicable to original applications. If the independence of the inventions be clear, such limitations will be made before any action upon the merits; otherwise it may be made at any time before final action thereon, in the discretion of the Examiner. A requirement of division will not be repeated without the written approval of a Law Examiner. After a final requirement of division, the applicant may elect to prosecute one group of claims retaining the remaining claims in the case with the privilege of appealing from the requirement of division after final action by the Examiner on the group of claims prosecuted.

By canceling in Rule 44 the words "but which subject-matter might be claimed therein," so that the rule as amended will read as follows:

44. A reservation for a future application of subject-matter disclosed but not claimed in a pending application will not be permitted in the pending application.

By canceling Rule 46 and substituting therefor the following:

46. The applicant, if the inventor, must make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides, and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state under oath that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States for more than two years prior to his application, or patented or described in any printed publication in any country before his invention for more than two years prior to his application, or patented in any foreign country on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. If any application for patent has been filed in any foreign country by the applicant in this country, or by his legal representatives or assigns, prior to his application in this country, he shall state the country or countries in which such application has been filed, giving the date of such application, and shall also state that no application has been filed in any other country or countries than those mentioned, and if no application for patent has been filed in any foreign country, he shall so state. This oath must be subscribed to by the affiant.

If the application be made by an executor or administrator of a deceased person or guardian, conservator, or representative of an insane person, the oath will allege the relationship of the affiant to the inventor and, upon information and belief, the facts which the inventor is required by this rule to make oath to.

The Commissioner may require an additional oath in cases where the applications have not been filed in the Patent Office within a reasonable time after the execution of the original oath.

By canceling Rule 47 and substituting therefor the following:

47. The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made, except that no oath or affirmation may be administered by any attorney appearing in the case. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

When the oath is taken before an officer in a country foreign to the United States, all the application papers must be attached together and a ribbon passed one or more times through all the sheets of the application, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath was taken.

By canceling Rule 48 and substituting therefor the following:

48. When an applicant presents a claim for matter originally shown or described but not substantially embraced in the statement of invention or claim originally presented, he will file a supplemental oath to the effect that the subject-matter of the proposed amendment was part of his invention, was invented before he filed his original application, was not known or used before his invention, was not patented or described in a printed publication in any country more than two years before his application, was not patented in any foreign country on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application, was not in public use or on sale in this country for more than two years before the date of his application, and has not been abandoned. Such supplemental oath must be attached to and properly identify the proposed amendment.

In proper cases the oath here required may be made by an executor or administrator of a deceased person or a guardian, conservator, or representative of an insane person. (See Rule 46.)

By inserting in line I of Rule 50 after the word "inventor" the words or one of the persons indicated in Rule 25 and substituting for the word "inventor" in line 2 the word applicant and canceling in line 3 the words "must be attested by two witnesses," so that the rule as amended will read as follows:

50. The drawing may be signed by the inventor or one of the persons indicated in Rule 25, or the name of the applicant may be signed on the drawing by his attorney in fact. The drawing must show every feature of the invention covered by the claims, and the figures should be consecutively numbered, if possible. When the invention consists of an improvement on an old machine the drawing must exhibit, in one or more views, the invention itself, disconnected from the old structure, and also in another view so much only of the old structure as will suffice to show the connection of the invention therewith.

By canceling Rule 51 and substituting therefor the following:

51. Two editions of patent drawings are printed and published—one for Office use, certified copies, etc., of the size and character of those attached to patents, the work being about 6 by 9½ inches; and one reduction of a selected portion of each drawing for the Official Gazette.

By canceling Rule 52 and substituting therefor the following:

- 52. This work is done by the photolithographic process, and therefore the character of each original drawing must be brought as nearly as possible to a uniform standard of excellence, suited to the requirements of the process, to give the best results, in the interest of inventors, of the Office, and of the public. The following rules will therefore be rigidly enforced, and any departure from them will be certain to cause delay in the examination of an application for Letters Patent:
  - (1) Drawings must be made upon pure white paper of a thickness corresponding to two-sheet or three-sheet bristol-board. The surface of the paper must be calendered and smooth. India ink alone must be used, to secure perfect black and solid lines.
  - (2) The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work and signatures must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring downwardly from the marginal line, a space of not less than 1¼ inches is to be left blank for the heading of title, name, number, and date.
  - (3) All drawings must be made with the pen only. Every line and letter (signatures included) must be absolutely black. This direction applies to all lines, however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clear, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. Sectional shading should be made by oblique parallel lines, which may be about one-twentieth of an inch apart. Solid black should not be used for sectional or surface shading. Free-hand work should be avoided wherever it is possible to do so.
  - (4) Drawings should be made with the fewest lines possible consistent with clearness. By the observance of this rule the effectiveness of the work after reduction will be much increased. Shading (except on sectional views) should be used only on convex and concave surfaces, where it should be used sparingly, and may even there be dispensed with if the



drawing is otherwise well executed. The plane upon which a sectional view is taken should be indicated on the general view by a broken or dotted line, which should be designated by numerals corresponding to the number of the sectional view. Heavy lines on the shade sides of objects should be used, except where they tend to thicken the work and obscure letters of reference. The light is always supposed to come from the upper left-hand corner at an angle of forty-five degrees.

- (5) The scale to which a drawing is made ought to be large enough to show the mechanism without crowding, and two or more sheets should be used if one does not give sufficient room to accomplish this end; but the number of sheets must never be more than is absolutely necessary.
- (6) The different views should be consecutively numbered. Letters and figures of reference must be carefully formed. They should, if possible, measure at least one-eighth of an inch in height, so that they may bear reduction to one-twenty-fourth of an inch; and they may be much larger when there is sufficient room. They must be so placed in the close and complex parts of drawings as not to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, where there is available space, and connected by lines with the parts to which they refer. They should not be placed upon shaded surfaces, but when it is difficult to avoid this, a blank space must be left in the shading where the letter occurs, so that it shall appear perfectly distinct and separate from the work. If the same part of an invention appear in more than one view of the drawing it must always be represented by the same character, and the same character must never be used to designate different parts.
- (7) The signature of the applicant should be placed at the lower right-hand corner of each sheet, and the signatures of the witnesses, if any, at the lower left-hand corner, all within the marginal line, but in no instance should they trespass upon the drawings. (See specimen drawing, Appendix.) The title should be written with pencil on the back of the sheet. The permanent names and title constituting the heading will be applied subsequently by the Office in uniform style.

All views on the same sheet must stand in the same direction and must if possible stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the proper illustration of the invention, the sheet may be turned on its side. The space for heading must then be reserved at the right and the signatures placed at the left occupying the same space and position as in the upright views and being horizontal when the sheet is held in an upright position. One figure must not be placed upon another or within the outline of another.

(8) As a rule, one view only of each invention can be shown in the Gazette illustrations. The selection of that portion of a drawing best calculated to explain the nature of the specific improvement would be facilitated and the final result improved by the judicious execution of a figure with express reference to the Gazette, but which must at the same time serve as one of the figures referred to in the specification. For this purpose the figure may be a plan, elevation, section, or perspective view,

according to the judgment of the draftsman. All its parts should be especially open and distinct, with very little or no shading, and it must illustrate the invention claimed only, to the exclusion of all other details. (See specimen drawings.) When well executed, it will be used without curtailment, or change, but any excessive fineness, or crowding, or unnecessary elaborateness of detail will necessitate its exclusion from the Gazette.

(9) Drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binders' board; or should be rolled for transmission in a suitable mailing tube, but should never be folded.

An agent's or attorney's stamp, or advertisement, or written address will not be permitted upon the face of a drawing, within or without the marginal line.

By canceling Rule 54 and substituting therefor the following:

54. The foregoing rules relating to drawings will be rigidly enforced. A drawing not executed in conformity thereto may be admitted for purposes of examination if it sufficiently illustrates the invention but in such case the drawing must be corrected or a new one furnished before the application will be allowed. The necessary corrections will be made by the Office, upon applicant's request and at his expense. (See Rule 72.)

By changing the word "artists" in line I of Rule 55 to draftsmen, so that the rule as amended will read as follows:

55. Applicants are advised to employ competent draftsmen to make their drawings.

The Office will furnish the drawings at cost, as promptly as its draftsmen can make them, for applicants who can not otherwise conveniently procure them.

By canceling Rule 56 and substituting therefor the following:

56. A model will be required or admitted as a part of the application only when on examination of the case in its regular order the Primary Examiner shall find it to be necessary or useful. In such case, if a model has not been furnished, the Examiner shall notify the applicant of such requirement, which will constitute an official action in the case. When a model is received in compliance with the official requirement, the date of its filing shall be entered on the file-wrapper. Models not required nor admitted will be returned to the applicants. When a model is required, the examination may be suspended until it shall have been filed.

By canceling all of Rule 58 except the first sentence, so that the rule as amended will read as follows:

58. The model must be neatly and substantially made of durable material, metal being deemed preferable; but when the material forms an essential feature of the invention, the model should be constructed of that material.

By substituting in Rule 59 for the words "is often desirable, in order" the words may be required if necessary, so that the rule as amended will read as follows:

59. A working model may be required if necessary to enable the Office fully and readily to understand the precise operation of the machine.

By substituting in Rule 60 for the words "remained rejected for more than one year" the words become abandoned, so that the rule as amended will read as follows:

60. In all applications which have become abandoned, the model, unless it

is deemed necessary that it should be preserved in the Office may be returned to the applicant upon demand and at his expense; and the model in any pending case of less than one year's standing may be returned to the applicant upon the filing of a formal abandonment of the application, signed by the applicant in person and any assignee. (See Rule 171.)

Models belonging to patented cases shall not be taken from the Office except in the custody of some sworn employee of the Office specially authorized by the Commissioner.

By canceling Rule 63 and substituting therefor the following:

63. Applications filed in the Patent Office are classified according to the various arts, and are taken up for examination in regular order of filing, those in the same class of invention being examined and disposed of, as far as practicable, in the order in which the respective applications are completed.

Applications which have been put into condition for further action by the Examiner shall be entitled to precedence over new applications in the same class of invention.

The following cases have preference over all other cases at every period of their examination in the other enumerated:

- (1) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service, and when for that reason the head of some Department of the Government requests immediate action and the Commissioner so orders; but in such case it shall be the duty of such head of a Department to be represented before the Commissioner in order to prevent the improper issue of a patent.
- (2) Applications for reissues.
- (3) Cases remanded by an appellate tribunal for further action, and statements of grounds of decisions provided for in Rules 135 and 142.
- (4) Applications which appear to interfere with other applications previously considered and found to be allowable, or which it is demanded shall be placed in interference with an unexpired patent or patents.
- (5) Applications which have been renewed or revived, but the subject-matter not changed
- (6) Applications filed more than twelve months after the filing of an application for the same invention in a foreign country.

Applications will not be advanced for examination, excepting upon order of the Commissioner either to expedite the business of the Office or upon a verified showing that delay will probably cause the applicant serious and irreparable injury.

By canceling Rule 66 and substituting therefor the following:

66. Upon taking up an application for action on the merits the Examiner shall make a thorough investigation of the prior art with respect to the invention sought to be protected in the application. Upon the rejection of an application for want of novelty, the Examiner must cite the best references at his command. When the reference shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of the reference, if not obvious, must be clearly explained and the anticipated claim specified.

If domestic patents be cited, their dates and numbers, the names of the patentees, and the classes of invention must be stated. If foreign patents be cited, their dates and numbers, the names of the patentees, and the classes

of inventions must be stated, and such other data must be furnished as may be necessary to enable the applicant to identify the patents cited. In citing foreign patents the number of sheets of drawing involving the parts relied upon for anticipation must be specified, and in case part only of the patent is involved, the particular sheets of the drawing containing the parts relied upon must be identified by number, or by stating the numbers of the figures involved. If printed publications be cited, the title, date, page or plate, author, and place of publication, or place where a copy can be found, will be given. When reference is made to facts within the personal knowledge of an employee of the Office, the data will be as specific as possible, and the reference must be supported, when called for, by the affidavit of such employee (Rule 76); such affidavit shall be subject to contradiction, explanation, or corroboration by the affidavits of the applicant and other persons. If the patent, printed matter, plates, or drawings so referred to are in the possession of the Office, copies will be furnished at the rate specified in Rule 191, upon the order of the applicant.

By canceling Rule 69 and substituting therefor the following:

69. In order to be entitled to the reëxamination or reconsideration provided for in Rules 65 and 67, the applicant must make request therefor in writing, and he must distinctly and specifically point out the supposed errors in the Examiner's action; the applicant must respond to every ground of objection and rejection of the prior Office action except as provided in Rule 64, and the applicant's action must appear throughout to be a bona fide attempt to advance the case to final action. The mere allegation that the Examiner has erred will not be received as a proper reason for such reëxamination or reconsideration.

By canceling Rule 70 and substituting therefor the following:

70. In original applications all amendments of the drawings, or specifications, and all additions thereto, must conform to at least one of them as it was at the time of the filing of the application. Matter not found in either, involving a departure from the original invention, cannot be added to the application even though supported by a supplemental oath, and can be shown or claimed only in a separate application.

By changing the word "within" to by in line 9 of Rule 72, so that the rule as amended will read as follows:

72. After the completion of the application the Office will not return the specification for any purpose whatever. If applicants have not preserved copies of the papers which they wish to amend, the Office will furnish them on the usual terms.

The drawing may be withdrawn only for such corrections as cannot be made by the Office; but a drawing cannot be withdrawn unless a photographic copy has been filed and accepted by the Examiner as a part of the application. Permissible changes in the construction shown in any drawing may be made only by the Office and after an approved photographic copy has been filed. Substitute drawings will not be admitted in any case unless required by the Office.

By canceling the words "or Commissioner" in line 7 of Rule 74, so that the rule as amended will read:

74. When an amendatory clause is amended, it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause, as finally amended, when the application is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange

 the papers for printing or copying, the Examiner may require the entire specification to be rewritten.

By canceling Rule 77 and substituting therefor the following:

77. If an applicant neglect to prosecute his application for one year after the date when the last official notice of any action by the Office was mailed to him, the application will be held to be abandoned, as set forth in Rule 171.

Suspensions will only be granted for good and sufficient cause, and for a reasonable time specified. Only one suspension may be granted by the Primary Examiner; any further suspension must be approved by the Commissioner.

Whenever action upon an application is suspended upon request of an applicant, and whenever an applicant has been called upon to put his application in condition for interference, the period of one year running against such application shall be considered as beginning at the date of the last official action preceding such actions.

By canceling Rule 78 and substituting therefor the following:

78. Amendments after the notice of allowance of an application will not be permitted as a matter of right, but may be made, if the specification has not been printed, on the recommendation of the Primary Examiner, approved by the Commissioner, without withdrawing the case from issue. (See Rule 165.)

By changing the word "inventor" in section (4) of Rule 82 to applicant and by canceling section (5) of the rule, so that the rule as amended will read as follows:

- 82. The following order of arrangement should be observed in framing design specifications:
  - (1) Preamble, stating name and residence of the applicant, title of the design, and the name of the article for which the design has been invented.
  - (2) Description of the figure or figures of the drawing.
  - (3) Claim.
  - (4) Signature of applicant.

By canceling in lines I and 2 of Rule 85 the words "to the original patentee, his legal representatives, or the assigns of the entire interest," so that the rule as amended will read as follows:

85. A reissue is granted when the original patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, provided the error has arisen through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention.

Reissue applications must be made and the specifications sworn to by the inventors, if they be living.

By adding to Rule 86 the following paragraph:

A reissue will be granted to the original patentee, his legal representative or assigns as the interest may appear, so that the rule as amended will read as follows:

86. The petition for a reissue must be accompanied by an order for a certified copy of the abstract of title to be placed in the file, giving the names of all assignees owning any undivided interest in the patent. In case the application be made by the inventor it must be accompanied by the written assent of such assignees.

A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

By inserting after the word "of" in line 2 of Rule 87 the words the first sentence of, so that the rule as amended will read as follows:

- 87. Applicants for reissue, in addition to the requirements of the first sentence of Rule 46, must also file with their petitions a statement on oath as follows:
  - (1) That applicant verily believes the original patent to be inoperative or invalid, and the reason why.
  - (2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective or insufficient specification," particularly specifying such defects or insufficiencies.
  - (3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," distinctly specifying the part or parts so alleged to have been improperly claimed as new.
  - (4) Particularly specifying the errors which it is claimed constitute the inadvertence, accident, or mistake relied upon, and how they arose or occurred.
  - (5) That said errors arose "without any fraudulent or deceptive intention" on the part of the applicant.

By adding to Rule 90 the following words excepting that division will not be required, so that the rule as amended will read as follows:

90. An original claim, if reproduced in the release specification, is subject to reëxamination, and the entire application will be revised and restricted in the same manner as original applications, excepting that division will not be required.

By canceling in line 2 of Rule 92 the words "and which might have been lawfully claimed therein" and inserting the words which is an indivisible part of the invention claimed therein, so that the rule as amended will read as follows:

92. Matter shown and described in an unexpired patent, which is an indivisible part of the invention claimed therein, but which was not claimed by reason of a defect or insufficiency in the specification, arising from inadvertence, accident, or mistake, and without fraud or deceptive intent, cannot be subsequently claimed by the patentee in a separate patent, but only in a reissue of the original patent.

By canceling Rule 94 and substituting therefor the following:

94. Interferences will be declared between applications by different parties for patent or for reissue when such applications contain claims for substantially the same invention which are allowable in the application of each party, and interferences will also be declared between applications for patent, or for reissue, and unexpired original or reissued patents, of different parties, when such applications and patents contain claims for substantially the same invention which are allowable in all of the applications involved: *Provided*, That where the filing date of any applicant is subsequent to the filing date of any patentee, the applicant shall file an affidavit that he made the invention before the filing date of the patentee.

Parties owning applications or patents which contain conflicting claims will be required before an interference is declared to show cause why these claims shall not be eliminated from all but one of the applications or patents of common ownership.

By canceling Rule 95 and substituting therefor the following:

95. Before the declaration of interference all preliminary questions must be settled by the Primary Examiner, and the issue must be clearly defined; the invention which is to form the subject of the controversy must have been



patented to one of the parties or have been decided to be patentable, and the claims of the respective parties must be put in such condition that they will not require alteration after the interference shall have been finally decided, unless the evidence adduced upon the trial shall necessitate or justify such change.

In case the subject-matter in controversy has been patented to one of the parties but is deemed by the Examiner not to be patentable, he shall call the case to the attention of the Commissioner, who may direct the declaration of the interference.

By substituting for the word "cover" in line 2 of Rule 96 the word relate to and by adding to the rule the last paragraph of Rule 97, so that the rule as amended will read as follows:

of. Whenever the claims of two or more applications differ in phraseology, but relate to substantially the same patentable subject-matter, the Examiner, when one of the applications is ready for allowance, will suggest to the parties. such claims as are necessary to cover the common invention in substantially the same language. The Examiner will send copies of the letter suggesting claims to the applicant and to the assignee, as well as to the attorney of record in each case. The parties to whom the claims are suggested will be required to make such claims and put the applications in condition for allowance within a specified time in order that an interference may be declared. Upon the failure of any applicant to make the claims suggested within the time specified, such failure or refusal shall be taken without further action as a disclaimer of the invention covered by the claim, and the issue of the patent to the applicant whose application is in condition for allowance will not be delayed unless the time for making the claim and putting the application in condition for allowance beextended upon a proper showing. If a party make the claim without putting his. application in condition for allowance, the declaration of the interference will not be delayed, but after judgment of priority the application of such party will be held for revision and restriction, subject to interference with other applications.

Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the Examiner will notify each of said principal parties, and also the attorney, of this fact.

By canceling the last paragraph of Rule 97, so that the rule as amended will read as follows:

97. When an interference is found to exist and the applications are prepared therefor, the Primary Examiner will forward to the Examiner of Interferences the files and drawings; notices of interference for all the parties (as specified in Rule 103) disclosing the name and residence of each party and that of his attorney, and of any assignee, and, if any party be a patentee, the date and number of the patent; the ordinals of the conflicting claims and the title of the invention claimed; and the issue, which shall be clearly and concisely defined in so many counts or branches as may be necessary in order to include all interfering claims. Where the issue is stated in more than one count the respective claims involved in each count should be specified. The Primary Examiner shall also forward to the Examiner of Interferences for his use a statement disclosing the applications involved in interference, fully identified, the name and residence of any assignee, and the names and residences of all attorneys, both principal and associate, and arranged in the inverse chronological order of their filing

as completed applications, and also disclosing the issue or issues and the ordinals of the conflicting claims.

By changing in Rule 104 the words "fixed upon" in line 5 to set and the word "such" in line 7 to the, so that the rule as amended will read as follows:

104. If either party require a postponement of the time for filing his preliminary statement, he will present his motion, duly served on the other parties, with his reasons therefor, supported by affidavit, and such motion should be made, if possible, prior to the day previously set. But the Examiner of Interferences may, in his discretion, extend the time on ex parte request or upon his own motion.

By canceling Rule 106 and substituting therefor the following:

106. When a part only of an application is involved in an interference, the applicant may withdraw from his application the subject-matter adjudged not to interfere, and file a new application therefor, or he may file a divisional application for the subject-matter involved, if the invention can be legitimately divided: *Provided*, That no claim shall be made in the application not involved in the interference broad enough to include matter claimed in the application involved therein.

By canceling Rule 107 and substituting therefor the following:

107. An applicant involved in an interference may, with the written consent of the assignee, when there has been an assignment, before the date fixed for the filing of his preliminary statement (see Rule 110), in order to avoid the continuance of the interference, disclaim under his own signature, the invention of the particular matter in issue, and upon such disclaimer judgment shall be rendered against him.

By canceling Rule 109 and substituting therefor the following:

109. An applicant involved in an interference may, at any time within thirty days after the preliminary statements (referred to in Rule 110) of the parties have been received and approved, on motion duly made, as provided by Rule 153, file an amendement to his application containing any claims which in his opinion should be made the basis of interference between himself and any of the other parties. Such motion must be accompanied by the proposed amendment and when in proper form will be set for hearing before the Law Examiner. Where a party opposes the admission of such an amendment in view of prior patents or publications, full notice of such patents or publications must be given at least five days prior to the date of hearing. On the admission of such amendment, and the adoption of the claims by the other parties within a time specified by the Law Examiner, the Primary Examiner will redeclare the interference or will declare such other interferences as may be necessary to include the said claims. New preliminary statements will be received as to the added claims, but motions for dissolution with regard thereto will not be considered where the questions raised could have been disposed of in connection with the admission of the claims. Amendments to the specification will not be received during the pendency of the interference, without the consent of the Commissioner, except as provided herein, and in Rule 106.

Any party to an interference may bring a motion to put in interference any claims already in his application or patent, which in his opinion should be made the basis of interference between himself and any of the other parties. Such motions are subject to the same conditions, and the procedure in connection

therewith is the same, so far as applicable, as hereinabove set forth for motions to amend.

By canceling section (2) of Rule 110 and substituting therefor the following (lines 7 and 8):

(2) The date upon which the first drawing of the invention and the date upon which the first written description of the invention was made, and by inserting in line 22 after "made" the words or if a written description of the invention has not been made, so that the rule as amended will read as follows:

110. Each party to the interference will be required to file a concise preliminary statement, under oath, on or before a date to be fixed by the Office, showing the following facts:

- (1) The date of original conception of the invention set forth in the declaration of interference.
- (2) The date upon which the first drawing of the invention and the date upon which the first written description of the invention was made.
- (3) The date upon which the invention was first disclosed to others.
- (4) The date of the reduction to practice of the invention.
- (5) A statement showing the extent of use of the invention.
- (6) The applicant shall state the date and number of any application for the same invention filed within twelve months before the filing date in the United States, in any foreign country adhering to the International Convention for the Protection of Industrial Property or having similar treaty relations with the United States.

If a drawing has not been made, or if a written description of the invention has not been made, or if the invention has not been reduced to practice or disclosed to others or used to any extent, the statement must specifically disclose these facts.

When the invention was made abroad the statement should set forth:

- (1) That the applicant made the invention set forth in the declaration of interference.
- (2) Whether or not the invention was ever patented; if so, when and where, giving the date and number of each patent, the date of publication, and the date of sealing thereof.
- (3) Whether or not the invention was ever described in a printed publication; if so, when and where, giving the title, place, and date of such publication.
- (4) When the invention was introduced into this country, giving the circumstances with the dates connected therewith, which are relied upon to establish the fact.

The preliminary statements should be carefully prepared, as the parties will be strictly held in their proofs to the dates set up therein.

If a party prove any date earlier than alleged in his preliminary statement, such proof will be held to establish the date alleged and none other.

The statement must be sealed up before filing (to be opened only by the Examiner of Interferences; see Rule III), and the name of the party filing it, the title of the case, and the subject of the invention indicated on the envelop. The envelop should contain nothing but this statement.

(For forms see 36 and 37, Appendix.)

By adding to Rule III the following paragraph:

A party who alleges no date in his preliminary statement earlier than the filing date of the application or applications of the other party or parties shall



not have access to the preliminary statement of said party or parties, so that the rule as amended will read as follows:

111. The preliminary statements shall not be opened to the inspection of the opposing parties until each one shall have been filed, or the time for such filing, with any extension thereof, shall have expired and not then unless they have been examined by the proper officer and found to be satisfactory.

Any party in default in filing his preliminary statement shall not have access to the preliminary statement or statements of his opponent or opponents until he has either filed his statement or waived his right thereto, and agreed to stand upon his record date.

A party who alleges no date in his preliminary statement earlier than the filing date of the application or applications of the other party or parties shall not have access to the preliminary statement of said party or parties.

By canceling Rule 116 and substituting therefor the following:

116. The parties to an interference will be presumed to have made the invention in the chronological order in which they have filed their completed applications for patents clearly disclosing the invention; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

By canceling Rule 119 and substituting therefor the following:

119. Upon the filing of an affidavit by any senior party to an interference that the time for taking testimony on behalf of any junior party has expired and that no testimony has been taken by him, an order will be entered that the junior party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause judgment shall be so rendered. If any showing is made in response to the order, it must be served upon the opposing party and noticed for hearing by the party filing it.

By canceling Rule 122 and substituting therefor the following:

122. Motions to dissolve an interference (1) alleging that there has been such informality in declaring the same as will preclude the proper determination of the question of priority of invention, or (2) denying the patentability of an applicant's claim, or (3) denying his right to make the claim should contain a full statement of the grounds relied upon and should, if possible, be made not later than the thirtieth day after the statements of the parties have been received and approved. Such motions and all motions of a similar character, if in the opinion of the Commissioner they are in proper form, will be heard and determined by the Law Examiner, due notice of the day of hearing being given by the Office to all parties. If in the opinion of the Commissioner, the motion is not in proper form or if it is not brought within the time specified and no satisfactory reason is given for the delay, it will not be considered and the parties will be so notified.

When the motion has been decided by the Law Examiner the files and papers, with his decision, will be sent at once to the docket clerk.

Motions to shift the burden of proof should be made before, and will be determined by, the Examiner of Interference. No appeal from the decision on such motions will be entertained, but the matter may be reviewed on appeal from the final decision upon the question of priority of invention.

By canceling Rule 123 and substituting therefor the following:

123. Setting a motion brought under the provisions of Rule 109 or of Rule



122 for hearing by the Law Examiner will act as a stay of proceedings pending the determination of the motion. To effect a stay of proceedings in other cases, motion should be made before the tribunal having jurisdiction of the interference, who will, sufficient grounds appearing therefor, order a suspension of the interference pending the determination of such motion.

By canceling Rule 124 and substituting therefor the following:

124. Where, on motion for dissolution, the Law Examiner renders an adverse decision upon the merits of a party's case, as when he holds that the issue is not patentable or that a party has no right to make a claim, he shall fix a limit of appeal not less than twenty days from the date of his decision. Appeal lies to the Examiners-in-Chief in the first instance and will be heard *inter partes*. If the appeal is not taken within the time fixed, it will not be entertained except by permission of the Commissioner.

No appeal will be permitted from a decision rendered upon motion for dissolution affirming the patentability of a claim or the applicant's right to make the same.

Appeals may be taken directly to the Commissioner, except in the cases provided for in the preceding portions of this rule, from decisions on such motions as, in his judgment, should be appealable.

By canceling Rule 125 and substituting therefor the following:

125. After an interference is finally declared it will not, except as herein otherwise provided, be determined without judgment of priority founded either upon the evidence or upon a written concession of priority or upon a written disclaimer of the invention or upon a written declaration of abandonment of the invention, signed by the inventor himself (and by the assignee, if any).

By omitting the words "before judgment on the question of priority" in line 10 of Rule 126, so that the rule as amended will read as follows:

126. The Examiner of Interferences or the Examiners-in-Chief may, either before or in their decision on the question of priority, direct the attention of the Commissioner to any matter not relating to priority which may have come to their notice, and which, in their opinion, establishes the fact that no interference exists, or that there has been irregularity in declaring the same (Rule 122), or which amounts to a statutory bar to the grant of a patent to either of the parties for the claim or claims in interference. The Commissioner may suspend the interference and remand the case to the Primary Examiner for his consideration of the matters to which attention has been directed. From the decision of the Examiner appeal may be taken as in other cases. If the case shall not be so remanded, the Primary Examiner will, after judgment, consider any matter affecting the rights of either party to a patent which may have been called to his attention, unless the same shall have been previously disposed of by the Commissioner.

By canceling Rule 130 and substituting therefor the following:

130. Where the patentability of a claim to an opponent is material to the right of a party to a patent, said party may urge the non-patentability of the claim to his opponent as a basis for the decision upon priority of invention. A party shall not be entitled to raise this question, however, unless he has duly presented and prosecuted a motion under Rule 122 for dissolution upon this ground or shows good reason why such a motion was not presented and prosecuted. When the Law Examiner has denied such a motion for dissolution the question will not be reinvestigated by the Examiner of Interferences except in

view of evidence which was not before the Law Examiner, but it may be raised before the appellate tribunals on appeal from award of priority by the Examiner of Interferences.

By canceling the word "should" in line 6 of Rule 131, so that the rule as amended will read as follows:

131. When on motion duly made and upon satisfactory proof, it shall be shown that, by reason of the inability or refusal of the inventor to prosecute or defend an interference, or from other cause, the ends of justice require that an assignee of an undivided interest in the invention be permitted to prosecute or defend the same, it may be so ordered.

By inserting before "required" in line 10 of Rule 133 the word twice, so that the rule as amended will read as follows:

133. Every applicant for a patent, any of the claims of whose application have been twice rejected for the same reasons, upon grounds involving the merits of the invention, such as lack of invention, novelty, or utility, or on the ground of abandonment, public use or sale, inoperativeness of invention, aggregation of elements, incomplete combination of elements, or, when amended, for want of identity with the invention originally disclosed, or because the amendment involves a departure from the invention originally presented; and every applicant who has been twice required to divide his application, and every applicant for the reissue of a patent whose claims have been twice rejected for any of the reasons above enumerated, or on the ground that the original patent is not inoperative or invalid, or if so inoperative or invalid that the errors which rendered it so did not arise from inadvertence, accident, or mistake, may, upon payment of a fee of \$10, appeal from the decision of the Primary Examiner to the Examiners-in-Chief. The appeal must set forth in writing the points of the decision upon which it is taken, and must be signed by the applicant or his duly authorized attorney or agent.

By canceling Rule 135 and substituting therefor the following:

135. Upon the filing of the appeal the same shall be submitted to the Primary Examiner, who, is he find it to be regular in form, and to relate to an appealable action, shall within ten days from the filing thereof, furnish the Examiners-in-Chief with a written statement of the grounds of his decision on all the points involved in the appeal, with copies of the rejected claims and with the references applicable thereto, giving a concise explanation of the invention claimed and of the subject-matter of the references so far as pertinent to the appealed claims. The Examiner shall at the time of making such statement furnish a copy of the same to the appellant. If the Primary Examiner shall decide that the appeal is not regular in form or does not relate to an appealable action, a petition from such decision may be taken directly to the Commissioner, as provided in Rule 142.

By canceling Rule 136 and substituting therefor present Rule 140, so that the rule will read as follows:

136. From the adverse decision of the Board of Examiners-in-Chief appeal may be taken to the Commissioner in person, upon payment of the fee of \$20 required by law.

By canceling Rule 137 and substituting therefor the following:

137. The appellant shall on or before the day of hearing file a brief of the authorities and arguments on which he will rely to maintain his appeal.

If the appellant desires to be heard orally, he will so indicate when he files his appeal; a day of hearing will then be fixed, and due notice thereof given him.

By canceling Rule 138 and substituting therefor present Rule 141, so that the rule as amended will read as follows:

138. Affidavits received after the case has been appealed will not be admitted without remanding the application to the Primary Examiner for reconsideration, but the appellate tribunals may in their discretion refuse to remand the case and proceed with the same without consideration of the affidavits.

By canceling Rule 139 and substituting therefore the following:

130. The Examiners-in-Chief in their decision will affirm or reverse the decision of the Primary Examiner only on the points on which appeal shall have been taken. (See Rule 133.) Should they discover any apparent grounds not involved in the appeal for granting or refusing Letters Patent in the form claimed, or any other form, they will annex to their decision a statement to that effect, with such recommendation as they shall deem proper.

Should the Examiners-in-Chief recommend the refusal of Letters Patent in the form claimed, their recommendation will stand as a rejection and will reopen the case for amendment or showing of fact, or both, before the Primary Examiner, responsive to that rejection. The recommendation of the Examiners-in-Chief is binding upon the Primary Examiner unless an amendment or showing of facts not previously of record is made which, in the opinion of the Primary Examiner, overcomes the recommendation. The applicant may waive the right to prosecution before the Primary Examiner and have the case reconsidered by the Examiners-in-Chief upon the same record, and from an adverse decision of the Examiners-in-Chief on reconsideration, appeal will lie to the Commissioner as in other cases. The applicant may also waive reconsideration of the Examiners-in-Chief and appeal directly to the Commissioner.

Should the Examiners-in-Chief recommend the granting of Letters Patent in an amended form, the applicant shall have the right to amend in conformity with such recommendation, which shall be binding upon the Primary Examiner in the absence of new references or grounds for rejection.

If the Commissioner, in reviewing the decision of the Examiners-in-Chief, discovers any apparent grounds for refusing Letters Patent not involved in the appeal, he will, before or after decision on the appeal, give reasonable notice thereof to the applicant; and if any amendment or action based thereon be proposed, he will remand the case to the Primary Examiner for consideration.

By canceling Rule 140 and substituting therefor present Rule 142, so that the rule as amended will read as follows:

140. Cases which have been heard and decided by the Commissioner on appeal will not be reopened except by his order; cases which have been decided by the Examiners-in-Chief will not be reheard by them, when no longer pending before them, without the written authority of the Commissioner; and cases which have been decided by either the Commissioner or the Examiners-in-Chief will not be reopened by the Primary Examiner without like authority, and then only for the consideration of matters not already adjudicated upon, sufficient cause being shown. (See Rule 68.)

By substituting for Rule 41 the second paragraph of present Rule 143, so that the rule as amended will read as follows:

141. After decision by an appellate tribunal the case will be remanded at once to the Primary Examiner, subject to the applicant's right of appeal, for such action as will carry into effect the decision, or for such further action as the applicant is entitled to demand.

By substituting for Rule 142 present Rule 145, so that the rule as amended will read as follows:

142. Upon receiving a petition stating concisely and clearly any proper question which has been twice acted upon by the Examiner, and which does not involve the merits of the invention claimed, the rejection of a claim or a requirement for division, and also stating the facts involved and the point or points to be reviewed, an order will be made directing the Examiner to furnish a written statement of the grounds of his decision upon the matters averred within five days. The Examiner shall at the time of making such statement furnish a copy thereof to the petitioner. No fee is required for such a petition. Hearing will be granted in the discretion of the Commissioner.

By substituting for Rule 143 present Rule 146, omitting the reference to the appeal to the Court of Appeals of the District of Columbia, so that the rule as amended will read as follows:

143. In interference cases parties have the same remedy by appeal to the Examiners-in-Chief and to the Commissioner, as in ex parte cases.

By substituting for Rule 144 present Rule 147, changing the time for filing briefs from five days and one day to ten days and three days before the hearing, so that the rule as amended will read as follows:

144. Appeals in interference cases must be accompanied by brief statements of the reasons therefor. Parties will be required to file six copies of printed briefs of their arguments, the appellant ten days before the hearing and the appellee three days.

By substituting for Rule 145 present Rule 138, omitting "In contested cases," so that the rule as amended will read as follows:

145. The appellant shall have the right to make the opening and closing arguments, unless it shall be otherwise ordered by the tribunal having jurisdiction of the case.

By substituting for present Rule 146 the first paragraph of Rule 143, so that the rule as amended will read as follows:

146. Contested cases will be regarded as pending before a tribunal until the limit of appeal, which must be fixed, has expired, or until some action has been had which waives the appeal or carries into effect the decision from which appeal might have been taken.

By substituting for Rule 147 present Rule 144, omitting the word "deliberately" in line 1, so that the rule as amended will read as follows:

147. Cases which have been decided by one Commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

By canceling Rule 152 (which it is proposed to transfer and number 13) and substituting therefor the following:

152. Hearing in ex parte and contested cases will, as far as is convenient and proper, be set, advanced and adjourned to meet the wishes of the parties and their attorneys.

By omitting section (5) of Rule 154 and renumbering sections (6) and (7) as sections (5) and (6), so that the rule as amended will read as follows:

154. The following rules have been established for taking and transmitting testimony in interferences and other contested cases:

(1) Before the depositions of witnesses are taken by either party due notice shall be given to the opposing party, as hereinafter provided, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and of the names and residences of the witnesses to be examined, and the opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other can not be had.

- (2) The notice for taking testimony or for motions must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Service of such notice may be made in either of the following ways: (1) By delivering a copy of the notice to the adverse party or his attorney; (2) by leaving a copy at the usual place of business of the adverse party or his attorney with some one in his employment; (3) when such adverse party or his attorney has no usual place of business, by leaving a copy at his residence, with a member of his family over fourteen years of age and of discretion; (4) transmission by registered letter; (5) by express. Whenever it shall be satisfactorily shown to the Commissioner that neither of the above modes of obtaining or reserving notice is practicable, the notice may be published in the Official Gazette. notice shall, with sworn proof of the fact, time and mode of service thereof, be attached to the deposition or depositions whether the opposing party shall have cross-examined or not.
- (3) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition shall be taken. The deposition shall be carefully read over by the witness, or by the officer to him, and shall then be subscribed by the witness in the presence of the officer. The officer shall annex to the deposition his certificate showing (1) the due administration of the oath by the officer to the witness before the commencement of his testimony; (2) the name of the person by whom the testimony was written out, and the fact that, if not written by the officer, it was written in his presence; (3) the presence or absence of the adverse party; (4) the place, day, and hour of commencing and taking the deposition; (5) the reading by, or to, each witness of his deposition before he signs the same; and (6) the fact that the officer was not connected by blood or marriage with either of the parties, nor interested, directly or indirectly, in the matter in controversy. officer shall sign the certificate and affix thereto his seal of office, if he have such seal. He shall then, without delay, securely seal up all the evidence, notices, and paper exhibits, inscribe upon the envelop a certificate giving the title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude it from the envelop, it shall be authenticated by the officer and

transmitted in a separate package, marked and addressed as above provided.

- (4) If a party shall be unable to take any testimony within the time limited, and desires an extension for such purpose, he must file a motion, accompanied by a statement under oath setting forth specifically the reason why such testimony has not been taken, and distinctly averring that such motion is made in good faith, and not for the purpose of delay. If either party shall be unable to procure the testimony of a witness or witnesses within the time limited, and desires an extension for such purposes, he must file a motion, accompanied by a statement under oath setting forth the cause of such inability, the name or names of such witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on which efforts have been made to procure it. (See Rule 153.)
- (5) Upon notice given to the opposite party before the closing of the testimony, any official record, and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be used as evidence at the hearing.
- (6) All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

By adding to Rule 162 the words without the approval of the Commissioner, so that the rule as amended will read as follows:

162. Thirty-one or more printed copies of the testimony must be furnished—five for the use of the Office, one for each of the opposing parties, and twenty-five for the Count of Appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the twenty-five copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. These copies of the record of the junior party's testimony must be filed not less than forty days before the day of final hearing, and in the case of the senior party, not less than twenty days. They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case type-written copies must be furnished—one for the Office and one for each adverse party. Printing of the testimony cannot be dispensed with upon the stipulation of the parties without the approval of the Commissioner.

By canceling Rule 163 and substituting therefor the following:

163. Briefs at final hearing and on appeals from final decisions in contested cases shall be submitted in printed form and shall be of the same size and the same as to page and print as the printed copies of testimony. But in case satisfactory reason therefor is shown, type-written briefs may be submitted. Six

copies of the briefs at final hearing shall be filed three days before the hearing. Briefs on appeals shall be filed as provided in Rule 144.

At interlocutory hearings and on appeal from interlocutory decisions typewritten briefs may be used, and such briefs may be filed at or before the hearing. By stipulation of the parties or by order of the tribunal before whom the hearing is had briefs may be filed otherwise than as here prescribed.

By canceling the words "or suspended" in line 7 of Rule 165, so that the rule as amended will read as follows:

165. After notice of the allowance of an application is given, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the Office a new notice of allowance will be given. When the final fee has been paid upon an application for Letters Patent, and the case has received its date and number, it will not be withdrawn from issue on account of any mistake or change of purpose of the applicant or his attorney, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the Office, or because of fraud, or illegality in the application, or for interference. (See Rule 78.)

By canceling Rule 167 and substituting therefor the following:

167. Every patent shall issue within a period of three months from the date of the payment of the final fee, which fee shall be paid not later than six months from the time at which the application was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld. (See Rule 175.) In the absence of request to suspend issue the patent will issue in regular course. The issue closes weekly on Thursday, and the patents bear date as of the fourth Tuesday thereafter.

A patent will not be antedated.

By canceling Rule 169 and substituting therefor the following:

169. The patent will be delivered or mailed on the day of its date to the attorney of record, if there be one; or, if the attorney so request, to the patentee or assignee of an interest therein; or, if there be no attorney, to the patentee or to the assignee of the entire interest, if he so request.

By canceling Rule 171 and substituting therefor the following:

171. An abandoned application is one in which all the essential parts have not been filed so that it is completed and prepared for examination within a period of one year, or which the applicant has failed to prosecute within one year after any action therein of which notice has been duly given (see Rules 31 and 77), or which the applicant has expressly abandoned by filing in the Office a written declaration of abandonment, signed by himeslf and assignee, if any, identifying his application by title of invention, serial number, and date of filing. (See Rule 60.)

Prosecution of an application to save it from abandonment must include such proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceeding relative thereto, shall not operate to save the application from abandonment under section 4894 of the Revised Statutes.

By changing the words "such second" in line 5 of Rule 175 to any renewal, so that the rule as amended will read as follows:

175. When the patent has been withheld by reason of non-payment of the



final fee, any person, whether inventor or assignee, who has an interest in the invention for which such patent was ordered to issue may file a renewal of the application for the same invention; but any renewal application must be made within two years after the allowance of the original application. Upon the hearing of such new application abandonment will be considered as a question of fact.

By changing the word "second" in lines 3 and 4, Rule 176, to renewal, so that the rule as amended will read as follows:

176. In such renewal the oath, petition, specification, drawing, and model of the original application may be used for the renewal application; but a new fee will be required. The renewal application will not be regarded for all purposes as a continuation of the original one, but must bear date from the time of renewal and be subject to examination like an original application.

By canceling Rule 182 and substituting therefor the following:

182. The statutory disclaimers treated of in Rule 181 are to be distinguished from those which are embodied in original or reissue applications, as first filed or subsequently amended, referring to matter shown or described; but to which the disclaimant does not choose to claim title, and also from those made to avoid the continuance of an interference. The disclaimers falling within this present rule must be signed by the applicant in person and require no fee. (See Rule 107. For forms of disclaimers see Appendix, Forms 28 and 29.)

By canceling Rules 183 and 190 to 194, inclusive, and renumbering the remaining rules. (As Rules 184 to 189, inclusive, have previously been canceled, Rule 195 will be renumbered 183, and the remaining rules will be numbered accordingly.)

By changing the word "sectional" in line 2 of Rule 196 (184) to territorial, so that the rule as amended will read as follows:

184. Interest in patents may be vested in assignees, in grantees of exclusive territorial rights, in mortgages, and in licenses.

- (1) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.
- (2) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.
- (3) A mortgage must be written or printed and be duly signed.
- (4) A licensee takes an interest less than or different from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed.

By canceling the word "such" in line 6 of Rule 197, so that the rule as amended will read as follows:

185. An assignment, grant, or conveyance of a patent will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice unless recorded in the Patent Office within three months from the date thereof.

If any assignment, grant, or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of

Columbia, or any commissioner of the United States circuit court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be prima facie evidence of the execution of such assignment or conveyance.

By canceling Rule 206 and substituting therefor the following:

194. All payments of money required for Office fees must be made in specie, Treasury notes, national-bank notes, certificates of deposit, post-office moneyorders, or certified checks. Money-orders and checks should be made payable to the "Commissioner of Patents." Payment may also be made to the Treasurer, or to any of the assistant treasurers of the United States, or to any of the depositaries, national banks or receivers of public money, designated by the Secretary of the Treasury for that purpose, who will issue a certificate of deposit in triplicate and will forward the original and the duplicate certificates to the Secretary of the Treasury and the Commissioner of Patents, respectively, and will give the triplicate certificate to the depositor. Money sent by mail to the Patent Office will be at the risk of the sender. Letters containing money should be registered. In no case should money be sent with models.

By canceling Rule 207, the provisions of which have been embodied in proposed Rule 167.

By canceling Rule 209 and substituting therefor the following:

196. The Official Gazette, a weekly publication which has been issued since 1872, takes the place of the old Patent Office Report. It contains claims of all patents issued, including reissues and designs, with portions of the drawings selected to illustrate the inventions claimed; illustrations of trade-marks published, and lists of trade marks, prints and labels registered. It also contains decisions rendered by the courts in patent cases and by the Commissioner of Patents, and other special matters of interest to inventors.

The Gazette is furnished to subscribers at the rate of \$5 per annum. When sent abroad, an additional charge is made for the payment of postage. copies are furnished for ten cents each. All orders and remittances for the Gazette should be sent to the Superintendent of Documents, Government Printing Office, Washington, D. C. The Gazette is issued in monthly volumes, with a titlepage and index to each volume. An index is published annually, which is sent to all subscribers without additional cost.

On June 30, 1012, the publication of the monthly library edition issued since 1872, containing the full specifications and drawings of all patents granted during the previous month, was suspended.

The cancellation of Rules 183 and 190 to 194, inclusive, is proposed, since these rules relate to caveats, and are therefore obsolete, as the law providing for the filing of caveats was repealed July 1, 1910.

The other amendments are proposed in order to correct certain inaccuracies in the rules and in order to bring about certain needed reforms in the practice of the Office, as, for example, the elimination of motions to transmit to the Law Examiner motions to dissolve interferences.

Respectfully submitted.

(Signed) THOMAS EWING, Commissioner of Patents.

Department of the Interior, approved to take effect January 1, 1916. (Signed) Bo Sweeney, Assistant Secretary.

December 22, 1915.

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The Secretary of the Interior having approved the amendments to the Rules of Practice in the United States Patent Office proposed in the letter of December 22, 1915, it is ordered that the rules be amended as set forth therein, to take effect January 1, 1916.

(Signed) THOMAS EWING,

Commissioner.

December 22, 1915.

### United States Practice.

Trade Marks.

219 O. G., 931

Ex parte, The Illinois Seed Co. Decided January 9, 1915.

TRADE MARKS-DISCLAIMERS.

Where the Examiner of Trade Marks objected to a disclaimer of the word "Brand" used apart from applicant's mark, which consisted of the word "Trumpet" above the representation of a trumpet and the word "Brand" between them, *Held* that the disclaimer was sufficient.

On petition.

Trade Mark for Field and Grass Seeds and Seed-Grain, Timothy, Clover, Alfalfa, etc.

Messrs, Cheever & Cox for the applicant.

NEWTON, First Assistant Commissioner:

This is a petition from the action of the Examiner of Trade Marks objecting to the disclaimer of the word "Brand" used apart from applicant's mark, which consists of the word "Trumpet" above the representation of a trumpet and the word "Brand" between them, the disclaimer being in this form:

No claim being made to the word "Brand" apart from the mark shown in the drawing.

The Examiner takes the ground that such language—

means that when considered in connection with the remaining features of the mark the applicant does make a claim to its exclusive use.

Since there is no provision for disclaimers in the trade mark statute, the propriety of their use at all is doubtful; but since the court of appeals in Johnson v. Brandau (139 O. G., 732; 32 App. D. C., 348) and other authorities seem to sanction them I am not prepared to say that they should not be required under some circumstances. In the present case since applicant has disclaimed the ownership of "Brand" apart from his illustrated mark it would seem to be going too far to make him disclaim it when used with the rest of his mark, since it is not hard to imagine cases that may hereafter arise involving the use of "Brand" in a similar setting that would be embarrassing to applicant if he has disclaimed it altogether.

It is held, therefore, that the disclaimer is sufficient as it appears, and the petition is granted.

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# UNITED STATES ISSUE DAYS FOR PATENTS

1916

Dates of issue of patents in large figures; close of issue in small figures in the same square.—See Rule 207.

JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
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DEC. 9	JAN 6	FEB. 10	MAR. 9	APRIL 6	MAY 11	JUNE 8	JULY 6	AUG. 10	SEPT. 7	OCT. 12	NOV. 9
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DEC. 16	JAN. 13	FEB. 17	MAR. 16	APRIL 13	MAY 18	JUNE 15	JULY 18	AUG. 17	SEPT. 14	OCT. 19	NOV. 16
18	15	21	18	91	20	18	15	19	17	21	19
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25	22	28	25	23	27	25	22	26	24	28	26
DEC. 30	JAN. 27	MAR. 2	MAR. 30	APRIL 27	JUNE 1	JUNE 29	JULY 27	AUG. 31	SEPT. 28	NOV 2	NOV.
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# WM. WALLACE WHITE, Proprietor and Publisher

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N. Y., U. S. A.

Entered as second-class matter, October 17, 1912, at the Post-Office at New York, N. Y., under the Act of March 3, 1879.

# Patent and Trade Mark Review

Copyright, 1915, by Wm. Wallace White

A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

Edited and Published by

WM. WALLACE WHITE,

Attorney and Counsellor at Law,

Patents and Trade-Marks,

Successor to

RICHARDS & CO.,

WOOLWORTH BUILDING. NEW YORK CITY.

Thirteen Volumes of the *Review* have been completed, the first beginning with October, 1902, and

each subsequent volume with the October issue of the next suggesting year

of the next succeeding year.

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### Chile.

### Trade Marks. Proposed Law. Status.

Recent advices indicate that the proposed Chilean Trade Mark Law (see 13 P. & T. M. Rev., 291), will probably be approved at an early date. While it provides for an increased rate and a more extended series of Office formalities, its sponsors aver that it will assure a maximum of protection.

### South African Union.

### Industrial Property. Proposed Consolidation. Status.

Referring to our last notice on the above subject (13 P. & T. M. Rev., 227) we are advised by several of our South African correspondents that the bill relating to patents, trade marks, designs and copyright has now passed the first reading and that the second reading is expected to take place this month. The Consolidation Act may be reasonably expected to come into operation about the middle of this year.

No material changes in the bill are anticipated prior to the enactment thereof.

### Great Britain.

### Patents. Renumbering Specifications on Publication. New Rule.

In order to give the public the advantage of having abridgments of Specifications up to date while retaining their numerical sequence, Applications for Patents made subsequent to 1915 will be given new numbers when their complete Specifications are accepted, or become open to public inspection before acceptance. The new numbers will start with No. 100,001 (without any indication of date), and will supersede the original Application numbers in all proceedings after acceptance of the Complete Specifications.

It is intended in future to issue abridgments of Specifications in the *Journal* a few weeks later than that in which their acceptance or publication is advertised, so that they will be available for search purposes soon after the printed copies of the Specifications are on sale; but, until the system is fully in force, they will only be issued when they are sufficient to make up a full sheet of sixteen pages.

The present series of abridgments will run concurrently with the new series in the *Journal* until April, 1917, when it will be entirely superseded.

(Signed) W. TEMPLE FRANKS.

(From The Illustrated Official Journal (Patents), Jan. 12, 1916.)

### Sweden.

Patents. Foreign Holders. Taxes. Moratorium. Extension of Term.
Ordinance Effective Jan. 1, 1916.

(Translation.)

ROYAL ORDONNANCE CONCERNING A DELAY FOR PAYING CERTAIN ANNUITIES.\*

The Royal Palace of Stockholm, Dec. 17, 1915.

We, Gustaf, etc.

To patentees, living outside Sweden, is granted, in cases when the time for pay-

<sup>\*</sup> Replacing ordinance of Sept. 21, 1915, for which see 14 P. & T. M. Rev., 3.

ing such an annuity with fine, as mentioned in Section 11 of the Patent Law of May 16, 1884, expires during the period Jan. 1-June 30, 1916, a delay of three calendar months counted from the day when the annuity ultimately should have been paid, according to the said section.

This ordonnance shall come into force on the 1st day of Jan., 1916. All persons concerned, etc.

(Signed.)

(Translation by The Society of Swedish Patent Agents.)

# Hungary.

Patents. Taxes. Prolongation of Term. War Measure. Decree of December 23, 1915.

(Translation.)

Decree No. 87639-1915 of the Royal Hungarian Minister of Commerce of December 23, 1915, relating to the prolongation of terms for the payment of annual patent taxes.

ART. I. The decree No. 54400-1915 of August, 1915 (14 P. & T. M. Rev., 67), communicated by circular letter of August 23, 1915, according to which the term for the payment of annual patent taxes and fines was prolonged to December 31, 1915, has been amended, so that the term of this moratorium is prolonged to June 30, 1916.

The remaining provisions of the cited decree remain unaltered.

ART. 2. The present decree becomes effective on the day of its publication (Dec. 28, 1915).

Note: This decree is applicable to citizens or subjects of the following States: Denmark, Germany, France, Great Britain, Italy, Norway, Austria, Sweden, Switzerland, Spain and United States.

### Mexico.

Patents. Trade Marks. Revalidation. Extension of Term to May 31, 1916.

Resolution of January 27, 1916.

(Translation.)

Considering: That on account of the European War it has been impossible for many residents and foreigners to make application, within the term allowed therefor, for the revalidation of patent and trade mark registrations applied for and granted during the so-called Huerta and Convention Governments;

That, to the end that those interested suffer no prejudice as to their industrial property rights acknowledged by the resolutions that this Bureau issued November 5, 1914, December 16, of the same year, and September 24, 1915; and

That they may avail themselves of the benefits that these provisions give;

By decision of the First Chief of the Constitutionalist Army, charged with the Executive Power, this Bureau, in my charge, has issued the following:

I order: That the term allowed for the revalidation of patent and trade mark registrations, granted and made during the so-called Huerta and Convention Governments, be extended until May 31, of the present year.

The Constitution and Reforms! Mexico, January 27, 1916.

(Signed) The Acting Sub-Secretary,
PASTOR ROUAIX.

[Seal]

To the Director of

The Patent and Trade Mark Office.

### Austria.

Industrial Property. Applications under Convention. Priority. Prolongation of Term. Decree Effective Dec. 3, 1915.

The essential provisions contained in the decree issued by the Minister of Public Works, December 1, 1915, and published in *Oesterreichisches Patentblatt*, December 15, 1915, are substantially as follows:

The term for lodging applications for patents, trade marks, or designs under the provisions of the International Convention in Austria is prolonged for three months reckoned from a date to be subsequently stipulated by a decree, provided that the said term had not already expired on or before July 26, 1914. All applicants that are subjects or citizens of countries adhering to the International Convention are entitled to the benefit conferred by this decree, provided that the respective foreign country has granted or is about to grant full reciprocity to Austrian subjects.

It further provides that every case shall be reinstated into its former status, where the term of priority has lapsed in consequence of circumstances that arose from the present war, if the petition for reinstatement be filed simultaneously with the application within three months at the latest, from a date to be subsequently stipulated by a decree. Alien subjects or citizens of countries granting or about to grant like relief to Austrian subjects are entitled to the benefit of this decree.

The present decree finally provides for the supplementing of the provisions contained in the earlier decree of September 2, 1914 (13 P. & T. M. Rev., 3), insofar as it relates to the filing of a certified copy in support of the claim of priority under the Convention in the event that the usual term of six months has lapsed, by granting a reinstatement to its former status of an application, with the proviso that the petition for reinstatement be filed at the Patent Office, together with the certified copy of the specification as originally filed, prior to the grant. This decree becomes effective December 3, 1915.

# Brazil.

# Patents. Applications. Oppositions. Proposed Change of Practice.

Dr. José Bezerra, Minister of Agriculture, yesterday sent to the President of the Commission of Agriculture of the Chamber of Deputies, the basis for the reform of the law that at present regulates the service of patents of invention, accompanying it with the following statement:

"Diligent examination of the successive oppositions presented in this Ministry concerning the allowance of Patents of Invention strengthens the conviction—which I already had—that the observance of present legislation exposes us to serious difficulties, not alone in the consideration of many of those oppositions proceeding

in good order, but likewise in preventing like inventions being reproduced to the injury, either of the inventor, or of others interested.

It being impossible to provide prior obligatory examination for every case, for the reason that—besides causing greater delay in the issue of the patent, in consequence causing an appreciable increase of public expense through the creation of a numerous corps of experts, and, on the other hand, it being of the greatest advantage to give those interested the means of defending their rights against the pretensions of pseudo-inventors—the draft of the project that I have the honor to submit for the consideration of Your Excellency provides that prior to the allowance of a Patent a résumé of the preamble shall be published with the characteristic points of the invention, to the end that those that consider themselves prejudiced by this concession may in good time enter opposition.

Between this and others, the fundamental modification that the project establishes is that, to my mind, it will result in considerably improving the procedure of the patent service.

Before concluding, Mr. President, I wish to call particular attention to the fact that, recognizing the magnitude of the matter, I had no consideration other than to formulate a plan that might serve as an element of study for the enlightened minds of the members of this illustrious Commission which, in its wisdom, will correct the defects and supply the omissions that they will find therein." (Translation from Journal do Commercio, Dec. 30, 1915.)

We hope later to present the substance of the proposed measure.

# Orange Free State.

# Trade Marks. Renewal. Term within which to File Application. Ruling.

Although no provision is made in the Trade Mark Act 13 of 1893, regarding the term of protection granted thereunder, it was presumed that the Legislature intended it to be for fourteen years. This presumption is based on one of the sections of the schedules, published simultaneously with the Act in the Government Gazette, June 30, 1893, that reads as follows:

"On every application for the extension of the right to any trade mark, after the expiration of fourteen years, £ 2.0.0."

A case came recently to our notice, where the registered owner of a mark filed an application for the extension of his mark for another fourteen years after the first term had expired. The Registrar rejected the application on the ground that the certificate has lapsed, since the term for the renewal of the trade mark had expired at the time the application here in question was lodged. He, moreover, pointed out that applicant, should he desire to have the mark registered, could lodge a new application, subject to the payment of fees prescribed for an original application. Applicant's resident legal representative argued that, inasmuch as no specific term was stipulated either in the Act or Schedules, within which an application for renewal shall be lodged, applicant was entitled to the renewal of his mark. The Registrar declared that this was the first case of this kind that ever had come under his observation, and that in view of this fact he would consult the Law Officer. This he did, with the result that the renewal of the mark was proceeded with and the certificate of registration ensued.

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### Cuba.

# Trade Marks. Designs. Labels. Oppositions. Regulation. Decree No. 1238 of Sept. 9, 1915.

(Translation.)

WHEREAS: According to par. 1, Art. 68 of the Constitution of the Republic, the Executive has the power to decree such orders and establish such rules as may be necessary for the execution of the laws.

WHEREAS: According to par. 4, of Art. 12 of the Royal Decree of August 21, 1884, which is the Trade Mark Law, any one that obtains a certificate of registration of trade mark, label or design, has the right to oppose such applications of said class when same be like his own or may have a resemblance sufficient to deceive the purchaser.

WHEREAS: Said right of opposition has not been regulated by said Royal Decree of August 21, 1884, nor by any other by-law.

WHEREAS: Said lack of regulation can be easily corrected by publishing the corresponding application, and regulating the form in which said opposition should be established and prosecuted.

THEREFORE, I, RESOLVE:

- 1. Since the publication of this Decree, whenever an application for registration of a trade-mark, label or design be filed with the Secretary of Agriculture, the Patent and Trade Mark Branch will publish an advertisement stating the name of the applicant, description of the trade mark, label or design and date of the application, which advertisement shall be published for a period of ten days in the Official Gasette and in the Official Bulletin of the Secretary of Agriculture, Commerce and Labor.
- 2. Said publications are to be considered as prerequisite and a term of thirty days is granted from the date of the first publication for filing the oppositions established in par. 4, of Art. 12 of Royal Decree of August 21, 1884, or any other that may occur.
- 3. After an opposition is filed in due form and within the legal term, the Secretary of Agriculture, if it be necessary, shall hear the applicant, and within as short a term as possible shall order the prosecution of such investigations as may be considered necessary, and shall admit the documents presented. At the expiration of said term and extensions that the Secretary may have granted, and after all legal proceedings have been finished, the Secretary shall render the corresponding resolution, which shall also be published in the Official Gazette.
- 4. In each application will be recorded the numbers and dates of the Official Gasettes wherein the application is published, and the date of publication of the final resolution will be also recorded.
- 5. This Decree shall go into effect on the date of its publication in the Official Gazette.

Given at Havana, September 9, 1915.

(Signed) MARIO G. MENOCAL,

President.

(Signed) CRISTOBAL DE LA GUARDIA, Secretary of Justice.

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# Danish West Indies.

### Trade Marks. Ordinance of April 1, 1910.

(Translation.)

#### ORDINANCE

#### concerning

Protection of Trade Marks in the Danish West Indian Islands.

We, Frederick the Eighth, King of Denmark, etc., make known: The Colonial Council for St. Croix and the Colonial Council for St. Thomas has passed, and We by Our consent confirmed the following Ordinance:

### SEC. 1.

Anyone, who by registration of a special trade mark in the register kept by the Registrar in Copenhagen has obtained privilege in the mother-country pursuant to the Trade Marks Protection Act, No. 52, of April 11, 1890, compare Act No. 170 of December 19, 1898 and Act No. 71 of March 29, 1904, to use the mark registered for the purpose of distinguishing in general trade his goods from the goods of others, may, by application to the Government, in conformity with the prescriptions of this Ordinance, have the privilege extended to also apply to the Danish West Indian Islands for the period during which the privilege is kept in the mother-country.

### SEC. 2.

The application mentioned under Sec. 1 shall be directed in writing to the Government, and shall be accompanied by:

- (a) An extract—procured immediately before the notice is sent in—from the Trade Marks Register kept in Copenhagen concerning the mark in question.
- (b) An electrotype (cliché) suitable for printing the mark, corresponding to the electrotypes delivered to the Registration Office in Copenhagen.
- (c) A fee of 75 Francs for the filing and advertising of the notice.
- (d) If the person that sends in the application resides outside the Danish West Indian Islands, an appointment of a person residing on the Islands to act as his attorney before the Government, and to accept legal service on his behalf.

### SEC. 3.

The Government shall deliver to the person notifying or to his attorney (see (Sec. 2, d) an acknowledgment in writing of the receipt of the notice, which the Government then as soon as possible shall cause to be entered in a Trade Marks Register, arranged for that purpose, and advertised in those papers published on the Islands, in which public advertisements are inserted.

#### SEC. 4.

On request of the person that has right to the mark and when the protection for a mark granted in the Danish West Indian Islands has ceased or is cancelled in the mother-country, the mark shall be cancelled from the Trade Marks Register, and the cancellation published in the manner provided under Sec. 3.

If cancellation takes place without request from the person that has right to the mark, the Government shall inform the said person or his attorney (compare Sec. 2, d) of the obliteration.

### SEC. 5.

Anyone, who illegally affixes on goods offered for sale or on its container the name of another person or firm or the name of another person's real property or a trade mark for which another person has obtained protection by application pursuant to the present Ordinance, as well as he that offers for sale the goods marked in such manner, may, after prosecution by the injured party, be declared without right to use the mark or to offer for sale the goods bearing the mark.

If he has been cognizant of the other's better right, he shall be punished with a fine of from 300 to 3,000 Francs, and, in case of repeated offence, with corresponding fine or imprisonment; besides, he may be compelled to recompense the injury done and to remove the marks illegally applied, or, if required, to destroy the wares or their containers, if they are still in his possession or at his disposal.

### Sec. 6.

The provisions under Sec. 5 shall also apply to such cases, wherein another person's name or title, or the name of another person's real property, or a trade mark, for which another person has obtained protection by application pursuant to the present Ordinance, is not actually represented in unaltered form, but the alterations not being of such nature, that the names or marks on the whole may easily be mistaken in spite of the difference in details.

#### SEC. 7.

Civil litigations, in which complaint is lodged pursuant to the provisions in the present Ordinance, shall be dealt with as cases before a Danish "Gæsteret."

.Cases, brought in action pursuant to Sec. 5, par. 2, of the present Ordinance, shall be dealt with as public police cases, and complaint will only take place, if anyone that is injured by offence against the Ordinance so requests.

#### SEC. 8.

The fines imposed pursuant to the present Ordinance, as well as the notice fees, shall go to the Colonial Treasuries, to be divided equally between each of them.

### SEC. 9.

All persons shall be allowed to obtain information from the Trade Marks Register, kept by the Government, either by inspection of the Register or by extracts from the same, in which extracts, however, no delineations or drawings can be required to be represented.

A fee of 5 Francs shall be paid for an extract from the Register, which fee shall be equally divided between the Colonial Treasuries.

No fee shall be required for inspection of the Register.

#### SEC. 10.

This ordinance shall enter into force six months after the date on which it has received Royal Confirmation.

Amalienborg, Copenhagen, April 1st, 1910. Under Our Royal Hand and Seal.

(Seal of the Kingdom)

(Signed) FREDERICK R. (Signed) Edvard Brandes.



## Great Britain.

Patents. Designs. Trade Marks. Fees. Payments. Trading with the Enemy. Order (Amendatory) of Dec. 7, 1915.

TRADING WITH THE ENEMY.

PAYMENT OF PATENTS, DESIGNS, AND TRADE MARKS FEES.

WHEREAS by Royal Proclamation relating to Trading with the Enemy, dated the 9th day of September, 1914, it was, amongst other things, declared as follows:

"The expression 'enemy country' in this Proclamation means the territories of the German Empire and of the Dual Monarchy of Austria-Hungary together with all the Colonies and Dependencies thereof":

"The expression 'enemy' in this Proclamation means any person or body of persons, of whatever nationality, resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies enemy character attaches only to those incorporated in an enemy country":

AND WHEREAS it was also declared by the said Proclamation that from and after the date of the said Proclamation the persons therein referred to were prohibited from doing certain acts therein more specifically mentioned:

AND WHEREAS it was further declared by the said Proclamation as follows:

"Nothing in this Proclamation shall be taken to prohibit anything which shall be expressly permitted by Our Licence, or by the licence given on Our behalf by a Secretary of State, or the Board of Trade, whether such licences be especially granted to individuals or be announced as applying to classes of persons":

AND WHEREAS by Proclamation dated the 8th day of October, 1914, the said Proclamation dated the 9th day of September, 1914, called the Trading with the Enemy Proclamation No. 2 was amended as therein more specifically set forth and the said Proclamation of the 8th day of October, 1914, was to be read as one with the Trading with the Enemy Proclamation No. 2:

AND WHEREAS in pursuance of the powers conferred by the above-recited Proclamations the Board of Trade acting on behalf of His Majesty by licence dated the 4th day of November, 1914, granted licence to the persons therein referred to to pay the fees therein more specifically mentioned:

AND WHEREAS by Proclamation dated the 5th day of November, 1914, it was declared that the provisions of the Proclamations and Orders in Council then in force issued with reference to the state of war with the Emperor of Germany and the Emperor of Austria, King of Hungary should be extended to the war with Turkey subject to the exception in such Proclamation mentioned, and it was declared that the words 'enemy country' in any of the Proclamations or Orders in Council referred to in Article I of the said Proclamation should include the Dominions of His Imperial Majesty, the Sultan of Turkey other than Egypt, Cyprus and any territory in the occupation of Us or Our Allies:

AND WHEREAS by Proclamation dated the 7th day of January, 1915, the provisions of the Proclamations dated respectively the 9th day of September, 1914, the 8th day of October, 1914, and the 5th day of November, 1914, were extended as therein more specifically set forth:

And whereas by Proclamation dated the 16th day of February, 1915, called

the Trading with the Enemy (Occupied Territory) Proclamation, 1915, it was declared that the Proclamations for the time being in force relating to Trading with the Enemy should apply to territory in friendly occupation as they apply to Our territory or that of Our Allies and to territory in hostile occupation as they apply to an enemy country:

AND WHEREAS by Proclamation dated the 25th day of June, 1915, called the Trading with the Enemy (China, Siam, Persia and Morocco) Proclamation, 1915, it was declared that the Proclamations for the time being in force relating to Trading with the Enemy should apply to any person or body of persons of enemy nationality resident or carrying on business in China, Siam, Persia, or Morocco, in the same manner as they apply to persons or bodies of persons resident or carrying on business in an enemy country, provided that where an enemy has a branch locally situated in China, Siam, Persia, or Morocco, nothing in Article 6 of the Trading with the Enemy Proclamation No. 2 should be construed so as to prevent transaction by or with that branch being treated as transaction by or with an enemy:

AND WHEREAS by Proclamation dated the 14th day of September, 1915, it was declared as follows:

"For the purposes of the Proclamation for the time being in force relating to Trading with the Enemy the expression 'enemy' notwithstanding anything in the said Proclamations is hereby declared to include and to have included any incorporated company or body of persons (wherever incorporated) carrying on business in an enemy country or in any territory for the time being in hostile occupation":

AND WHEREAS by Proclamation dated the 16th day of October, 1915, it was declared that the Proclamations and Orders in Council then in force issued with reference to the state of war with the German Emperor or with reference to the state of war with the German Emperor and the Emperor of Austria, King of Hungary or with reference to the state of war with the German Emperor and the Emperor of Austria, King of Hungary and the Sultan of Turkey should be extended to the war with Bulgaria subject to the exception in such Proclamation mentioned, and it was declared that the words "Enemy Country" in any of the Proclamations or Orders in Council referred to in Article I of such Proclamation should include the Dominion of the King of the Bulgarians and the words "persons of enemy nationality" in any of the said Proclamations and Orders in Council should include subjects of the King of the Bulgarians:

AND WHEREAS by Proclamation dated the 10th day of November, 1915, it was declared that the Proclamations for the time being in force relating to Trading with the Enemy should as from the 10th day of December, 1915, apply to any person or body of persons of enemy nationality resident or carrying on business in Liberia or Portuguese East Africa in the same manner as they apply to persons resident or carrying on business in an enemy country, provided that where an enemy has a branch locally situated in Liberia or Portuguese East Africa nothing in Article 6 of the Trading with the Enemy Proclamation No. 2 should be construed so as to prevent transactions by or with that Branch being treated as transactions by or with an enemy:

AND WHEREAS it is desirable to restate and extend the provisions contained in the before-recited licence dated the 4th day of November, 1914:

Now, THEREFORE, the Board of Trade, acting on behalf of His Majesty, and in pursuance of the powers reserved in the said Proclamations and all other

powers thereunto them enabling, do hereby revoke the said licence dated the 4th day of November, 1914, and do hereby give and grant licence:

- (1) To all persons residing, carrying on business or being in the United Kingdom to pay
  - (a) on their own behalf or on behalf of any person or persons residing, carrying on business or being in the United Kingdom; and
  - (b) on behalf of any person or persons residing, carrying on business or being in any part of His Majesty's Dominions outside the United Kingdom who have been authorised to make such payments by the Government of that part of His Majesty's Dominions

any fees necessary for obtaining the grant of or for obtaining the renewal of Patents or for obtaining the registration of Designs or Trade Marks or the renewal of such registration in an "enemy country" and to pay the enemy agents their charges and expenses in relation to the matters aforesaid:

- (2) To all persons residing, carrying on business or being in the United Kingdom
  - (a) to pay on behalf of an "enemy" any fees payable in the United Kingdom on application for or renewal of the grant of patents or on application for the registration of designs or trade marks or the renewal of such registration and to pay agents in the United Kingdom (including themselves) their charges and expenses, if any, in relation to the matters aforesaid:
  - (b) to pay on behalf of an "enemy" to any person or persons residing, carrying on business or being in any part of His Majesty's Dominions outside the United Kingdom—subject to such persons having been authorized by the Government of that part of His Majesty's Dominions in which they reside, carry on business or are, to pay on behalf of an enemy any such fees in such part of His Majesty's Dominions—any fees payable on application for or renewal of the grant of patents or on application for the registration of designs or trade marks or the renewal of such registration in such part of His Majesty's Dominions, and also to pay to such persons their charges and expenses, if any, in relation to the matters aforesaid.

Dated this 7th day of December, 1915.

(Signed) G. S. BARNES, Secretary of the Board of Trade.

(From The Illustrated Official Journal (Patents), Dec. 22, 1915.)

# Australian Commonwealth.

Patents. Designs. Trade Marks. Procedure. War Measures. (Temporary)
Regulations, 1914, of Dec. 16, 1914.

PROCEDURE UNDER PATENTS (TEMPORARY) REGULATIONS, 1914, TRADE MARKS (TEMPORARY) REGULATIONS, 1914, AND DESIGNS (TEMPORARY) REGULATIONS, 1914.

COMMONWEALTH OF AUSTRALIA.
ATTORNEY-GENERAL'S DEPARTMENT.

Melbourne, 16th December, 1914

The undermentioned notifications in regard to matters arising under the

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Patents, Trade Marks and Designs Acts, 1914, and the regulations thereunder are published for general information.

(Signed) W. M. Hughes, Attorney-General.

- I. NOTIFICATION OF PROCEDURE TO BE FOLLOWED ON APPLICATION FOR THE AVOID-ANCE OR SUSPENSION OF PATENTS, TRADE MARKS OR DESIGNS.
- (1) A copy of the application when received will be at once sent to the address for service in Australia given by the patentee, licensee, or proprietor of the design or trade mark, as the case may be, or to any one whose name appears upon the Register as having an interest in the patent, design, or trade mark.
- (2) The date for hearing the application will be fixed as soon as possible after the receipt of the application and will be notified to the applicant and to the patentee, proprietor, or other person interested, at his address for service in Australia. The application and the date of the hearing will also be advertised in The Official Journal of Patents or The Official Journal of Trade Marks, and in the Commonwealth of Australia Gazette. The date fixed for the hearing will be not less than seven days after the advertisement of the application in the journal.
- (3) The applicant must produce evidence at the hearing in respect of the matters contained in-

Paragraphs (a), (b), and (c) of Regulation 3 (1) of the

Patents (Temporary) Regulations, 1914, or the

Designs (Temporary) Regulations, 1914, or the

Trade Marks (Temporary) Regulations, 1914,

as the case may be, and that he is not himself an alien enemy. The evidence may be either oral or by way of statutory declaration. The patentee, or the proprietor of the design or trade mark, or any one interested, may appear at the hearing in opposition to the application, provided that notice of his intention so to appear be given in writing to the Commissioner at the Patent Office before the date of the hearing.

- II.\* NOTIFICATION OF PROCEDURE TO BE FOLLOWED ON APPLICATIONS BY ENEMY SUB-JECTS FOR PATENTS, TRADE MARKS OR DESIGNS, OR OPPOSITIONS BY ENEMY SUBJECTS TO APPLICATIONS MADE BY PERSONS OTHER THAN ENEMY SUBJECTS FOR PATENTS, TRADE MARKS OR DESIGNS.
- (1) During the continuance of the war no patent will be sealed in favour of, and no registration of a trade-mark or design will be granted to, subjects of any State at war with the King (hereinafter called "such subjects").

The term "such subjects" will be taken to include—

- (a) a firm which by reason of its constitution may be considered as managed or controlled by such subjects or the business whereof is wholly or mainly carried on on behalf of such subjects;
- . (b) a company which has received its constitution in an enemy's State, and
  - (c) a company registered in the King's Dominions the business whereof is managed or controlled by such subjects, or is carried on wholly or mainly on behalf of such subjects.
- (2) As regards application for patents, designs, or trade marks no distinction will in the first place be drawn between those made by such subjects and

<sup>\*</sup>For amendment of this paragraph, see elsewhere in this issue of the Review.

those made by other persons. All proceedings connected with applications for patents or the registration of trade marks will be carried on as usual down to the time of acceptance, but in the case of applications by such subjects formal acceptance will not be issued.

- (3) As regards inventions communicated by such subjects as aforesaid in respect of which patents are applied for by persons in the Commonwealth, these will be treated in the same manner as if made directly by the communicator.
- (4) As regards oppositions to the grant of patents and the registration of trade marks arising after the commencement of the war,
  - (a) oppositions by such subjects in cases where the grant or registration opposed is one to a British citizen or alien friend will not be entertained; and
  - (b) in the case where the grant or registration opposed is a grant or registration to any such subjects, the notice of opposition will be accepted but all further proceedings will be suspended until the end of the war.
- III. NOTIFICATION WITH REGARD TO APPLICATIONS FOR EXTENSION OF TIME FOR DOING ANY ACT OR FILING ANY DOCUMENT UNDER THE PATENTS ACT, 1903-1909, THE TRADE MARKS ACT, 1905-1912, OR THE DESIGNS ACT, 1906-1912.

Applicants who fail to conform to the provisions of the Patents Act, 1903-1909, the Trade Marks Act, 1905-1912, the Designs Act, 1906-1912, and the regulations made thereunder, will run the risk of losing their rights unless they are able to bring themselves under the provisions of Regulation 8 of the Patents (Temporary) Regulation, 1914, Regulation 7 of the Trade Marks (Temporary) Regulations, 1914, and Regulation 8 of the Designs (Temporary) Regulations, 1914. Applications under paragraph (a) of those regulations should be made and will be considered at such time as the applicant, patentee, or proprietor, as the case may be, is in a position to do the act or file the document. Applications under paragraph (b) of those regulations should be made before the date for the doing of any such act. (From 9 Australian Official Journal of Trade Marks, 1140.)

# Patents. Designs. Trade Marks. Procedure. War Measures. Regulations (Amendatory) of Sept. 10, 1915.

Amended Procedure under Patents (Temporary) Regulations, 1914, Trade Marks (Temporary) Regulations, 1914, and Designs (Temporary) Regulations, 1914.

#### ATTORNEY-GENERAL'S DEPARTMENT.

Melbourne, 10th September, 1915.

It is hereby notified, for general information, that until further notice paragraph II of the Procedure set out hereunder is substituted for paragraph II of the Procedure (under the above mentioned Regulations) dated 16th December, 1914,\* and published in *The Australian Official Journal of Patents* of 22nd December, 1914, and *The Australian Official Journal of Trade Marks* of 24th December, 1914.

"(1) During the continuance of the war no patent will be sealed in

<sup>\*</sup>For text see elsewhere in this issue of the Review.



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favour of, and no registration of a trade mark or design will be granted to, subjects of any State at war with the King (hereinafter called 'such subjects').

"The term 'such subjects,' except for the purpose of paragraph 4 hereof, will be taken to include—

- "(a) a firm which by reason of its constitution may be considered as managed or controlled by such subjects or the business whereof is wholly or mainly carried on on behalf of such subjects;
- "(b) a company which has received its constitution in an enemy's State, and
- "(c) a company registered in the King's Dominions the business whereof is managed or controlled by such subjects, or is carried on wholly or mainly on behalf of such subjects;
- "(2) As regards applications for patents, designs, or trade marks, no distinction will in the first place be drawn between those made by such subjects and those made by other persons. All proceedings thereunder will be carried on as usual down to and including acceptance; but in the case of applications by such subjects all proceedings thereon subsequent to acceptance (except such proceedings and matters as are mentioned in Section 50 of the Patents Act, 1903-1909) will be suspended until otherwise directed.

"The suspension of proceedings upon applications by such subjects will only be recalled or discharged upon proper terms including, if thought fit, the release of the applicant of the privileges and rights which he would otherwise have under Section 54 of the Patents Act, 1903-1909.

"(3) As regards inventions communicated by such subjects as aforesaid in respect of which patents are applied for by persons in the Commonwealth, these will be treated in the same manner as if made directly by the communicator.

- "(4) As regards opposition to the grant of patents and the registration of trade marks arising after the commencement of the war—
- "(a) opposition by such subjects in cases where the grant or registration opposed is one to a British citizen or alien friend will not be entertained; and
- "(b) in the case where the grant or registration opposed is a grant or registration to any such subject, the notice of opposition will be accepted, but all further proceedings will be suspended until the end of the war."

  (Signed) W. M. Hughes.

(From Australian Official Journal of Trade Marks, Oct. 15, 1915.)

# New York City (United States).

Proprietary Medicines. Sec. 117 of the Sanitary Code, and Regulations, of Aug. 24, 1915. Effective Dec. 31, 1915.

REGULATIONS OF THE DEPARTMENT OF HEALTH OF THE CITY OF NEW YORK, ADOPTED AUGUST 24, 1915, RELATING TO SECTION 117 OF THE SANITARY CODE, WHICH PROVIDES AS FOLLOWS:

SECTION 117. Regulating the sale of proprietary and patent medicines.—No proprietary or patent medicine manufactured, prepared, or intended for internal

human use, shall be held, offered for sale, sold, or given away, in the City of New York, until the following requirements shall, in each instance, have been met:

The names of the ingredients of every such medicine to which the therapeutic effects claimed are attributed and the names of all other ingredients except such as are physiologically inactive shall be registered in the Department of Health in such manner as the Regulations of the Board of Health may prescribe.

The expression "proprietary or patent medicine," for the purposes of this section, shall be taken to mean and include every medicine or medicinal compound manufactured, prepared or intended for internal human use, the name, composition or definition of which is not to be found in the United States Pharmacopoeia or National Formulary, or which does not bear the names of all of the ingredients to which the therapeutic effects claimed are attributed and the names of all other ingredients except such as are physiologically inactive, conspicuously, clearly and legibly set forth in English on the outside of each bottle box or package in which the said medicine or medicinal compound is held, offered for sale, sold, or given away.

The provision of this section shall not, however, apply to any medicine or medicinal compound prepared or compounded upon the written prescription of a duly licensed physician, provided that such prescription be written or issued for a specific person and not for general use, and that such medicine or medicinal compound be sold or given away to or for the use of the person for whom it shall have been prescribed and prepared or compounded; and provided, also, that the said prescription shall have been filed at the establishment or place where such medicine or medicinal compound is sold or given away, in chronological order according to the date of the receipt of such prescription at such establishment or place.

Every such prescription shall remain so filed for a period of five years.

The names of the ingredients of proprietary and patent medicines, registered in accordance with the terms of this section, and all information relating thereto or connected therewith, shall be regarded as confidential, and shall not be open to inspection by the public or any person other than the official custodian of such records in the Department of Health, such persons as may be authorized by law to inspect such records, and those duly authorized to prosecute or enforce the Federal Statutes, the Laws of the State of New York, both criminal and civil and the Ordinances of the City of New York, but only for the purpose of such prosecution or enforcement.

This section shall take effect December 31, 1915.

REGULATION I. Information to be filed by applicant.—All applications for a Certificate of Registration shall be made upon official application blanks supplied by the Department of Health, and shall be signed by the applicant. The applicant shall, in each instance, furnish the following information:

- 1. Name of preparation;
- Name of applicant (specifying whether manufacturer, proprietor, importer or distributor);
- 3. Location of manufacturer;
- 4. Form in which preparation is marketed;
- 5. Therapeutic effects claimed for preparation;
- 6. Names in English (not quantities) of ingredients to which the therapeutic effects claimed are attributed, and the names in English (not quantities) of all other ingredients except such as are physiologically inactive;

7. Exact text of all advertising matter and every statement set forth upon or contained in the package, box, bottle, or container as sold, and of all advertising matter relating to the said preparation contained in any circular, leaflet, or book sold or distributed with or in connection with such preparation.

REGULATION 2. Sample of preparation to be furnished.—A sample of the preparation in the form in which it is to be sold or offered for sale in the City of New York, including the package, wrapper, label, box, bottle, container, and all advertising matter and statements shall be submitted with the application. Subsequent changes in form or text of labels, advertising matter, or statements shall be filed with the Department of Health and shall be approved before use.

REGULATION 3. Certificate of registration.—When such application properly filled out and signed, together with the required sample of the preparation, shall have been filed with the Department of Health and the approval thereof given by the Director of the Bureau of Food and Drugs and the Sanitary Superintendent, a Certificate of Registration shall be issued, specifying the name of the preparation, the name of the person registering such preparation, and the date. Every such Registration Certificate shall be numbered, which said number shall identify the particular preparation so registered and shall thereafter be affixed to the package containing such preparation in the manner hereinafter prescribed by Regulation 5.

REGULATION 4. Certificate of registration does not pass upon merits of or assume, endorse, or accept the claims to therapeutic action of proprietary or patent medicines.—No manufacturer, proprietor, distributor, importer, or vendor shall, in any advertisement or in any other manner, assert imply, or indicate that the Certificate of Registration issued by the Department of Health passes upon the merits, or assumes, endorses, or accepts the claims to therapeutic action of the proprietary or patent medicine, and no reference of any kind to the Department of Health shall be made in any advertisement, upon any label, package, box, bottle, or container in which such medicine is contained, or in any other manner whatsoever.

REGULATION 6. Non-resident applicants to have agent in city.—Where the place of business of any person, firm or corporation filing an application under Section 117 of the Sanitary Code is elsewhere than in the City of New York, such applicant shall furnish, at the time of filing such application with the Department of Health, the name of a person, firm or corporation, resident in or having a place of business in the City of New York as the agent or representative of such applicant. Any notice to or dealings with such agent or representative by the Department of Health or its duly authorized agents shall be as effective as if sent to or made with such applicant.

# United States.

Trade Marks. Interference. Procedure. Amendment of Rules. Order No. 2,240, of Jan. 11, 1916.

222 U. G., 1058.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,

Washington, D. C., January 11, 1916.

Acting under the provisions of section 483 of the Revised Statutes and section 26 of the Trade Mark Act of February 20, 1905, and with the approval of the Secretary of the Interior, the rules of the Patent Office relating to the registration of trade marks are amended as follows:

By canceling Rule 49 and substituting therefor the following:

49. Motions to dissolve an interference upon the ground that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude a proper determination of the question of the right of registration, or which deny the registrability of an applicant's mark, should contain a full statement of the grounds relied upon, and should, if possible, be made not later than the thirtieth day after the notices of the interference have been mailed. Such motions, and all motions of a similar character, if in the opinion of the Commissioner they are in proper form, will be heard and determined by the Examiner in charge of trade marks, due notice of the day of hearing being given to all parties. If in the opinion of the Commissioner the motion is not in proper form, or is not brought within the time specified and no satisfactory reason is given for the delay, it will not be considered and the parties will be so notified. Setting the motion for hearing by the Examiner of Trade Marks will act as a stay of proceedings pending the determination of the motion.

When the motion has been decided by the Examiner in charge of trade-marks, the files and papers, with his decision, will be sent at once to the docket clerk.

Motions to shift the burden of proof should be made before, and will be determined by, the Examiner in charge of interferences. No appeal from the decision on such motion will be entertained, but the matter may be reviewed on appeal from the final decision upon the question of priority.

(Signed) Thomas Ewing, Commissioner.

# United States Practice.

Patents.

222 O. G., 1055.

Commissioner's Decision.

EX PARTE POPE.

Decided May 27, 1915.

1. PATENTABILITY—RULE OF REASONABLE DOUBT.

The rule of reasonable doubt means that the existence and method of operation of an alleged anticipation must be established beyond a reasonable doubt; not that, on the question of patentability over a reference thus established, every

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reasonable doubt must be resolved in favor of the subsequent inventor.

2. SAME—SAME—RESOLVING DOUBT IN FAVOR OF APPLICANTS NOT COMPULSORY.

The common Office practice of resolving doubts in favor of applicants, while a good working rule, is not required by any rule of law, and its universal application is of doubtful wisdom.

3. SAME—SAME—SAME—OLD APPLICATIONS.

Where the history of the application showed consistently dilatory prosecution by the applicant, *Held* that it was unreasonable to resolve doubts in his favor.

APPEAL from Examiners-in-Chief.

ELECTRIC IGNITER.

Mr. Park Benjamin for the applicant.

EWING, Commissioner:

This is an appeal from the decision of the Examiners-in-Chief affirming the rejection by the Primary Examiner of the following claims:

- 1. An internal combustion engine, a generator of continuously-maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, and means for isochronizing the instant of attainment of a selected electromotive force and a predetermined piston position of the engine.
- 2. An internal combustion engine, a generator of continuously-maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, and means for isochronizing the instant of attainment of a maximum electromotive force and a predetermined piston position of the engine.
- 3. An internal combustion engine, a generator of continuously-maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, means for isochronizing the instant of attainment of maximum electro-motive force and a predetermined piston position of the engine, and means for augmenting said electro-motive torce.
- 4. An internal combustion engine a generator of continuously-maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, and transmitting mechanism between said engine and said generator; the said engine mechanism and generator being timed to isochronize the instant of attainment of a selected electro-motive force and a predetermined piston position of said engine.
- 5. An internal combustion engine, a generator of continuously-maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, means for operating said generator at a speed bearing a constant ratio to the speed of said engine, and means for changing the relation of the wave peak of said current with respect to a predetermined piston position.
- 6. An internal combustion engine, a generator of continuously-maintained periodic alternating current, fixed electrodes for igniting the charge in said engine in circuit with said generator, and means for isochronizing the instant of attainment of an electro-motive force sufficient to overcome the air gap between said electrodes and a pre-determined piston position of said engine.

The references cited are: Marcus, 286,030, October 2, 1883; McInnerney, 608,895, August 9, 1898.

The rule of reasonable doubt invoked by the attorney in a supplemental brief filed November 25, 1914, means that the existence and method of operation of an alleged anticipation must be established beyond a reasonable doubt. It does not

mean that on the question of patentability over such an anticipation once established every reasonable doubt must be resolved in favor of the subsequent inventor. It is quite a common practice of the Office to resolve any doubt in favor of an applicant for patent; but there is no rule of law compelling this, and, though doubtless the practice works well in many cases, a universal application of it is of questionable wisdom.

This present application was filed May 10, 1899, fifteen years before the present appeal was taken. It was acted upon by the Office in June, 1900, the action being responded to by the applicant in June, 1901. Thereafter the applicant took substantially his full year each time until in April, 1907, when the application was held abandoned for lack of proper prosecution. This holding was set aside by the Assistant Commissioner, and the same slow prosecution by the applicant was resumed and continued until December, 1913 since which time the application has been prosecuted diligently.

A review of all the actions will show that during the first fourteen years of the life of this application the prosecution thereof was prolonged by the applicant to the full extent permissible under the statute. Meanwhile, according to the showing of the applicant himself, the invention in question has gone into very wide use, the public having knowledge of it not merely because the owners of the application have manufactured devices embodying it, but because of the publication of foreign patents thereon.

Under such circumstances it would seem to be unreasonable to say that all reasonable doubt should be resolved in favor of the applicant on the question whether the production of the combination claimed involved invention at the time of the filing of the application.

The construction claimed is the combination of an internal-combustion engine of familiar type, an alternating-current generator of familiar type, fixed electrodes, and an adjustment whereby the attainment of a high potential in the motor is isochronized with the position of the piston in which it is desired that the explosion take place.

Applicant contends that his is the first application of a magneto to produce the spark in the engine of a motor-vehicle. The applicability, broadly speaking, of a magneto to an engine on a motor-vehicle as distinguished from a stationary internal-combustion engine seems to me to be obvious. Marcus shows a magneto of what was in 1899 an archaic construction applied to a stationary internal-combustion engine. The selection in 1899 of a more modern type of magneto would not involve invention, and it is admitted in the supplemental brief that at the date of the present application it was not new to take off the maximum or any other desired potential from an alternating-current generator.

Spark-plugs with fixed contacts were familiar, as shown by the Baker patent of record.

The general introduction of high-tension systems has been due to the growth of the art in various lines, not to the suggestion of any individual, particularly not to suggestions as obvious as on the record here presented the combination of the claims appealed is shown to be. Even now in the cheaper forms of machines, owing to lack of proper protection the high-tension ignition devices do not always work satisfactorily.

The discussion of the specific references by the lower tribunals seems to me to be satisfactory and need not be repeated.

The Examiners-in-Chief are sustained.



#### Patents.

### 221 O. G., 1039.

Supreme Court of the United States.

BRIGGS V. UNITED SHOE MACHINERY COMPANY.

Decided November 1, 1915.

### 1. JURISDICTION—SUITS ARISING UNDER PATENT LAWS.

A suit for royalties reserved upon the sale of a patent-right is not a suit arising under the patent laws, and the district court does not have jurisdiction on that ground.

### 2. SAME-SAME.

The bill in this case does not present a case in equity within sections 4915 and 4918, Revised Statutes, or of section 9 of the act of February 9, 1893.

3. SAME.

The general powers of the Federal courts when sitting as courts of equity can only be exerted in cases otherwise within the jurisdiction of those courts.

4. Annulment of Patent.

Only the United States can maintain a bill for the annulment of a patent on the ground of its procurement by fraud.

APPEAL from the District Court of the United States for the Southern District of New York.

Mr. William A. Milliken, for the appellant.

Mr. Horace A. Dodge and Mr. Alex. D. Salinger for the the appellee.

Memorandum opinion by Mr. Justice Van Devanter, by direction of the Court.

Whether this suit between citizens of the same State is one arising under the patent laws is the only question presented by this direct appeal under Jud. Code, section 238. The district court gave a negative answer to the question and dismissed the suit for want of jurisdiction.

The bill shows that its dominant and ultimate object is to enforce payment of royalties reserved to the plaintiff by a contract whereby he sold to the defendant certain existing and contemplated patents for improvements in shoesewing machines, and that to clear the way for a recovery of all the royalties claimed it seeks the annulment of a patent for such an improvement issued to Andrew Eppler after the contract and then assigned to the defendant, and also an adjudication that the plaintiff is entitled to a patent for the improvement covered by the Eppler patent.

A suit for royalties reserved upon the sale of patent-right is not a suit arising under the patent laws. This is settled by repeated decisions. (Albright v. Teas, 106 U. S., 613; Excelsior Wooden Pipe Co. v. Pacific Bridge Co., 185 U. S., 282, 285; Geneva Furniture Co. v. Karpen, 238 U. S., 254, 259, and cases cited.)

While the patent laws (Rev. Stat., secs. 4915, 4918) permit an applicant for a patent whose application has been refused by the Commissioner of Patents, or by the Court of Appeals\* of the District of Columbia upon appeal from the Commissioner, to establish his right to receive a patent by a suit in equity, and

also permit a patentee to maintain a suit in equity against the owner of an interfering patent to annul the latter, the present bill falls so far short of presenting a case within either section that it reasonably cannot be said to invoke the application of either. Recognizing that this is so, counsel for the plaintiff in his brief not only frankly concedes that he finds no statute in point, but endeavors to maintain the jurisdiction of the district court by a reference to the general powers of Federal courts when sitting as courts of equity, evidently forgetting that such powers can be exerted only in cases otherwise within the jurisdiction of those courts as defined by Congress.

Some stress is laid in the brief upon portions of the bill charging fraud in the procurement of the Eppler patent, but as only the United States can maintain a bill to annul the patent on that ground (Mowry v. Whitney, 14 Wall., 434; United States v. Bell Telephone Co., 128 U. S., 315, 368; United States v. American Bell Telephone Co., 159 U. S., 548, 555) these allegations cannot affect the solution of the question of jurisdiction here presented.

Our conclusion is that this is not a suit arising under the patent laws. Decree affirmed.

### Patents.

221 O. G., 1039.

Supreme Court of the United States.

FIREBALL GAS TANK & ILLUMINATING COMPANY AND SOLOMAN V. COMMERCIAL ACETYLENE COMPANY AND PREST-O-LITE COMPANY.

Decided November 29, 1915.

I. TERM OF PATENT-LIMITATION BY FOREIGN PATENT.

In considering the effect of foreign patents in limiting the term of a United States patent under section 4887, Revised Statutes, (as in force before the amendment of March 3, 1897,) the question is one of identity between the United States patent and the foreign patents, not whether one would anticipate or overlap the other.

2. SAME—SAME—PROCESS AND APPARATUS.

Certain foreign patents on processes closely allied to the United States patent on the apparatus considered and *Held* not to limit the term of the United States patent because not for the same invention.

Mr. Hugh K. Wagner, Mr. Charles E. Riorden, and Mr. John H. Biuninga for Fireball Gas Tank & Illuminating Company and Soloman.

Mr. John P. Bartlett for Commercial Acetylene Company and Prest-O-Lite Company.

Mr. Justice McKenna delivered the opinion of the Court,

By this writ there is brought here for review a decree of the circuit court of appeals affirming an order for an interlocutory injunction against the infringement of certain Letters Patent.

The circuit court of appeals considered the question in the case to be the narrow one whether the injunction was properly granted.

Petitioners, who were defendants in the district court, attack not only that conclusion but contend for the larger relief of a dismissal of the bill.

<sup>\*</sup> See section 9, act February 9, 1893, (c. 74, 27 Stat., 434).

The Acetylene Company is the owner of Letters Patent No. 664, 383 granted December 25, 1900, for "apparatus for storing and distributing acetylene gas." The Prest-O-Lite Company is the exclusive licensee as to the use of the invention on automobiles, carriages and other movable vehicles. Defendants manufacture and sell what is known as the "Fireball gas tank"; Soloman is the president of the defendant.

The bill was filed August 17, 1911, and a motion for a preliminary injunction was made. It was heard upon the bill, exhibits, answer, replication and affidavits. The circuit court granted the injunction and the order was affirmed, as we have said, by the circuit court of appeals. The court considered that the question before it was whether the trial court had exercised a sound judicial discretion in granting the injunction, and deciding that the trial court had done so, affirmed its action and refused to dismiss the bill, as it was urged to do. Opinion was reserved upon all of the questions which the record presented except the question of the abuse by the trial court of its discretion in the issue of the injunction, as the court said—

until the affidavit stage of this proceeding shall have been passed, until the rights of the parties shall have been tested by the production, hearing and cross-examination of their witnesses according to the salutary and searching practice of the common law, and until the court below, at the final hearing, has investigated and decided the issues these parties raise in the light of that testimony and of the argument of counsel.

Whether this prudence should be imitated or a broader scope of decision be made we will determine upon a consideration of the case.

The bill is in the usual form and set forth the respective rights in the patent of complainants, respondents here (we shall refer to them as complainants and to petitioners as defendants), and its infringement by defendants.

The defendants answered separately and each denied infringement and averred that by reason of the proceedings in the Patent Office the patent is limited in its scope to the subject-matter precisely as claimed and defined by the claims of the patent; that the prior art was such that the patent is devoid of novelty and patentable invention; that it is destitute of utility; that it does not comply with the statutes in precise difference from what preceded it, nor sufficiently describe the method of operating it and the process of making, constructing and using it; that complainants have a remedy at law and the Court has no jurisdiction; and that the alleged inventors of the patent were not the first and true inventors of it. Certain United States, British and German patents are alleged as antedating the invention and certain publications are represented as having disclosed it.

Public uses of the patent are also circumstantially alleged and profits are denied. It is further alleged that the invention of the Claude & Hess United States Patent No. 664,383, which is in suit, was patented to George Claude and Albert Hess by British Patent No. 29,750 and that the latter had expired or ceased before the issue of Patent No. 664,383; that the term of the latter expired not later than June 30, 1910; that a French patent to the same patentees expired June 30, 1911, and that therefore Patent No. 664,383 also expired not later than said date; and so with the German patent and other patents.

The first consideration which presents itself is the identity of the United States patent with the foreign patents which by their expiration, if they have expired, have terminated the United States patent.

The Letters Patent in suit describe the invention as "an improvement in apparatus for the storage and distribution of acetylene gas." Drawings illustrate the patent, and it is stated that it—

is designed to carry out a process of storage and distribution involving the employment of a chamber charged with a solvent of the gas to be stored and into which the gas is forced under suitable pressure,

and that the apparatus is to be charged at a central station and transported to the place of use as a complete article or package. The apparatus is described and illustrated and it is said that it, embodying the invention, consists essentially in the closed receptacle containing acetylene gas in solution and having an outlet for the gas so positioned as to be normally above the level of the solution and adapted to be provided with a burner or connected with a pipe system for the final use or distribution of the gas which escapes from the solution owing to the diminution of pressure when the outlet is opened. It is constructed and arranged "for the charging process as well as for the discharging process." Inlet and outlet passages are provided with suitable valves or cocks to close the same, and it is desirable, it is said, for the proper operation of the burners supplied in this way that the gas should be delivered thereto under a substantially uniform pressure only slightly above the atmospheric pressure, and for this purpose means are provided. A reducing-valve is shown as the means interposed between the interior of the receptacle which contains the dissolved gas and the outlet from which the gas is allowed to escape.

Claims 1, 2 and 5 are those with which we are concerned, and are as follows:

- I. A closed vessel containing a supersaturated solution of acetylene produced by forcing acetylene into a solvent under pressure, said vessel having an outlet for the acetylene gas which escapes from the solvent when the pressure is released or reduced, and means for controlling said outlet whereby the gas may escape therethrough at substantially uniform pressure, substantially as described.
- 2. A prepared package consisting of a tight shell or vessel; a solvent of acetylene contained within said vessel; and acetylene dissolved in and held by said solvent under pressure and constituting therewith a supersaturated solution, the package being provided at a point above the solvent with a reducing valve, substantially as and for the purpose set forth.
- 5. As a new article of manufacture, a gas package comprising a holder or tight vessel; a contained charge of acetone; a volume or body of gas dissolved by and compressed and contained within the solvent; and a reducing valve applied to an opening extending to the interior of the holder above the level of the solvent, substantially as set forth.

It is manifest, therefore, that the invention is of an apparatus designed to make use of the property of acetylene and other gases of solubility in a liquid in accordance with the law of solution (Henry's law), which is that the amount of gas absorbed by any liquid is proportioned to the pressure exercised upon the gas. Acetone is mentioned in claim 5 as a solvent.

We may now turn to the various patents whose expiration, it is contended, terminates the United States patent.

The law is (section 4887, Revised Statutes) that-

every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.

The question then is one of identity between the United States patent and the foreign patents. The first of the latter relied upon is the British patent to Claude and Hess of 1896. The title is "An improved method of storing acetylene for lighting and other purposes." The specification states:

This invention relates to an improved method of storing acetylene, for lighting and other purposes, in a small volume in order that it may be supplied in portable form to the customer, and it consists in dissolving the acetylene under pressure in certain liquids, the effect of pressure being to increase the solubility of the acetylene and so enable a considerable quantity of acetylene to be stored in a small volume in readiness to be supplied for any purpose for which it may be required.

Liquefied acetylene occupies the least volume but the pressure is very high and may become excessive should the critical temperature (37.5°) of acetylene be accidentally exceeded. On the other hand simple compression of the gas enables dangerous pressures to be avoided, but the quantity which can be stored in this way is too small. For these reasons we avail ourselves of the great solubility of acetylene in certain liquids, and increase this solubility by pressure, and this method of storing acetylene gas is the invention which we hereby broadly claim as our invention, whatever may be the liquid employed, the kind of apparatus used, or mode of operation.

Examples of liquids which may be employed as solvents are given. Among these are mentioned "alcohols" and "particularly acetones." It is stated that mixtures and combinations of these bodies vary their solvent power, and of this property the patentees said they availed themselves. And further that the solvent power increases with pressure and the solution of the gas in a liquid is the principle of the invention.

The process described as carried on, though subject to modifications, is as follows: The gas is dissolved in the liquid chosen and the—

solution under pressure, however obtained, is filled into a receiver of metal or glass (such as used for soda-water) capable of resisting the pressure employed. The receiver has a cock and the necessary adjuncts for connection, directly or through an expansion chamber, with the appliances in which the gas is used by the consumer, the substitution of charged for empty receivers being readily effected. The storage receivers may vary in dimensions from a small portable, to a large fixed gas-holder.

The claims describe the method and invention to be the utilization for the purposes of storage, in a small volume, of large quantities of acetylene gas, of the solubility of the gas in certain liquids by the application of pressure and the novel application as a solvent of acetylene under pressure for the purpose of storage, transportation, and utilization for industrial purposes; and the employment (claim 6) of a receiver containing a liquid charged with acetylene under pressure and from which the acetylene is evolved when required for use.

Defendants have fixed on claim 6 as establishing identity, and the British law patents is relied on. (British United Shoe Machinery Co. v. Fussell & Sons, Ltd., 45 P. R. C., 631.) The argument is that not only a receiver is claimed but a receiver of the exact or equivalent kind described in the United States patent. Counsel say:

Evolving gas from a receiver in which the gas is under pressure necessarily implies an outlet, an outlet necessarily implies a valve and a valve necessarily implies a control of the escaping gas.

They say further, quoting the cited case:

"A man must distinguish what is old from what is new by his claim, but he has not got to distinguish what is old from what is new in his claim." Applying the principle and asserting that the devices described in the United States patent were old it is contended that they would be implied as necessary elements of the claim.

Taken at its full import the argument would seem to establish that there could be no patent for an apparatus to execute a process if it (apparatus) were a combination of old elements. In many cases, therefore, the argument would confound process and apparatus, but it is established that a process may be independent of the instruments employed or designed to perform it. They may be independent or they may be related.

They may approach each other so nearly that it will be difficult to distinguish the process from the function of the apparatus. In such case the apparatus would be the dominant thing. But the dominance may be reversed and the process carry an exclusive right, no matter what apparatus may be devised to perform it. (Steinmetz v. Allen, 192 U. S., 543, 559.)

However related they may be, to which may be assigned dominance may be important in considering the patentable novelty of either or, it may be, the infringement of either, but not whether one has expired because the other has. (Laeds & Catlin v. Victor Talking Machine Co., 213 U. S., 301, 318.) The various questions thus arising may indeed have complexity, (Risdon Locomotive Works v. Medart, 158 U. S., 68,) but they must not be confounded.

A great deal of what we have said applies to the German patent. Its claim is for—

the employment of liquids charged with acetylene under pressure for the purpose of utilizing acetylene for illumination, motive power, heating and the like, characterized by acetylene being absorbed under pressure by a suitable liquid and the liquid saturated with acetylene being preserved or contained in suitable vessels, from which the acetylene gas can be supplied for use, a pressure regulator being preferably interposed.

This claim is preceded by a lengthy explanation (too lengthy to quote) setting forth the properties of acetylene and its absorption by certain liquids and the dependence of the amount of absorption upon pressure and the use of such properties and pressure for storing and utilizing the gas. It is said:

The vessels for holding the liquid saturated with acetylene must be provided with a cock or valve from which the gas escapes according to the diminution of pressure which occurs, and can then be used for the customary purposes.

And an apparatus is described-

with whose aid the storing process can be carried into practice.

Care is taken to mention-

that the process is in no way limited to the apparatus described and shown.

It is clear, therefore, that the process and the described vessel of storage are separate and that the invention is for the former. An apparatus was mentioned in display of the utility of the process. (See Tilghman v. Proctor, 102

U. S., 707.) It was not the intention to claim a particular form of device and secure a patent for it.

The title of the French patent is "A system of storing acetylene." And it is said that the object of the—

invention is a system of storing acetylene whereby acetylene to be used for any purpose whatsoever, especially for lighting, may be inclosed in a restricted space and easily transported.

A description of the process is given and the properties of the gas and its solvent which make the law of process. And it is said the solution under pressure obtained by the means described—

or by any other means, is placed in a metal recipient (or a glass recipient, like seltzer water siphons) susceptible of resisting the pressure employed. The recipient is provided with a faucet and the necessary fittings to enable it to be connected, either directly or by means of an expander, with the apparatus of consumption at the house of the consumer.

### The claims were:

- 1. For the storage of large quantities of acetylene in a small space, the application of the solubility of this gas in certain liquids, using pressure for the purpose of increasing the amount of gas dissolved per unit of volume of the liquid, as described above.
- 2. For the purpose of effecting the solution under pressure of large quantities of acetylene in a small volume of liquid, the use of methods and apparatus employed to cause the solution under pressure of other gases in other liquids, especially of carbonic acid in water.

There were certificates of addition to the patent, the first of which set forth the advantage of mixing the liquid with a porous body capable of absorbing it. "An expedient and practical form of accomplishing this" is set forth in the second certificate. The third certificate of addition connects the patent—

with a safety applicance to be adapted especially on recipients where the acetylene is dissolved in an appropriated liquid, such as acetone, according to the process described in—

### the patent:

The contention is that the patent is for a "system," not for a "process or method," and that besides the "'résumé'" or claims of the first patent especially refer to both "'method and apparatus'" and that—

the certificates of addition, especially the last two, unquestionably are for the apparatus, namely, the gas tank.

We think the contentions are untenable. The distinction between system and method is too subtle, and, besides, it is clear that the patentee considered the words as meaning the same thing, and the apparatus referred to was one, it was said—

employed to cause the solution under pressure of other gases in other liquids.

It was not the apparatus of the United States patent, though having some features the same.

But it is contended that even if considered as a "method" patent-

it is merely for the method of operating the apparatus, constituting the function of the apparatus, and, therefore, under the decision of this court, is for the same invention.

And this is contended to be established by Mosler Safe & Lock Co. v. Mosler (127 U. S., 354) and by a ruling of the Patent Office upon the application of

Claude and Hess for an "improvement in a method of storing acetylene gas for distribution" and the acceptance of that ruling by the applicants.

The Bosler case, it was said in Miller v. Eagle Manfg. Co., (151 U. S., 186, 197) held—

that a patent having issued for a product, as made by a certain process, a later patent could not be granted for the process which results in the product.

The process was a purely mechanical process, and the ruling, it would seem, must be confined to the exact facts of the case, for in Miller v. Eagle Manfg. Co. it was said that—

a single invention may include both the machines and the manufacture it creates, and in such cases, if the inventions are really separable, the inventor may be entitled to a monopoly of each.

And Sewell v. James (98 U. S., 75) was cited for the purpose of showing that there might be a patent for the process and one for the product. Merrill v. Yeomans (94 U. S., 568) was also cited as holding that—

where a patent described an apparatus, a process, and a product, and the claims cover only the apparatus and the process, the law provided a remedy by a surrender of the patent and a reissue for the purpose of embracing the product.

The ruling of the Commissioner of Patents referred to above is as follows:

It was common long prior to the appellants' invention to force under pressure into a liquid solvent thereof in a closed vessel and was also common to draw off gas from a holder where it was contained under pressure, through an opening, the effective size of which was directly controlled by and proportionate to the pressure of the gas within the holder, or, in other words, through a pressure regulator. The appellants were therefore not the inventors of the step of storing gas, as set forth, nor of the step of permitting gas to escape from a place of storage in the manner set forth. Neither of these steps modifies in any manner the old and expected effect of the other and the final result of the alleged process, namely, distributing gas at a uniform pressure, is the same as that produced by processes old in the art, as above stated. The appellants have, therefore, not invented a new and patentable process, although, as held in a companion case, they have devised an apparatus by which the old process of storing gas can be made practically and commercially useful. Claims to that apparatus have been allowed and it is believed that it is the only patentable invention disclosed by them.

It appears, further, that they do not cover proper methods, but merely the functions of mechanism and that they are not patentable in view of the decisions in *Cochrane v. Deener* (94 U. S., 780) and *Boyden Brake Co. v. Westinghouse*, (83 O. G., 1067.) Claim 3 nearly covers several independent disconnected steps which do not go to make up a patentable process.

The "companion case" referred to by the Commissioner is the patent in suit, and it will be observed that the Commissioner said it was for an apparatus by which the old process of storing gas could be made practically and commercially

useful and that claims to it had been allowed. It was, therefore, distinctly a patent for an apparatus, while, on the contrary, all the foreign patents are explicitly for methods. The devices described in them were not a result of the operation of the methods. Some receptacle or apparatus was necessary to be shown to produce and hold the solution of the gas and the liquid employed as a solvent. Something else was necessary for the use of the solution, and the device of the United States patent was aimed to secure it. It is distinct from the method. Whether it has patentable novelty is another question. And a serious question it is. The solubility of acetylene in liquids especially in acetone, is availed of in all of the patents, United States and foreign. This cannot be denied—indeed, is admitted—and, as we have seen, there are devices described in the foreign patents for storing the solution and devices indicated for its use. The similarities and differences between the patents have given rise to a diversity of opinion and decision.

The Circuit Court of Appeals for the Sixth Circuit discerned a difference between the British patent and that in suit and considered that the former was for the process and the latter for an instrument to perform the process and, therefore, the two were not for the same inventiton and that necessarily the United States patent did not expire with the British patent (192 Fed., 321).

The Circuit Court of Appeals for the Seventh Circuit expressed a contrary view and decided that the British patent and the patent in suit were for substantially the same invention, and the British patent having expired the patent in suit expired with it. The decisions had, respectively, the support of Judge Denison, (188 Fed., 89) and Judge Kohlsaat, (188 Fed., 85; 192 Fed., 321).

It was decided in the Circuit Court for the Eastern District of Wisconsin, Judge Quarles sitting, that the device of the patent in suit was patentable and was not anticipated by anything in the prior art (166 Fed., 907; see also 181 Fed., 387).

It was this conflict of views that induced this writ, but the conflict is not as to all questions in the case. If the decisions of the trial courts may be in opposition to invention and infringement as well as on the effect of the foreign patents, such conflict cannot be asserted to the opinions of the circuit court of appeals. That of the eighth circuit—and to which this writ is directed—refrained from a decision on the merits and considered only the propriety of the discretion exercised by the trial court in granting a preliminary injunction; and, reviewing the expression of judicial opinion, decided that the court was justified in making the order. The court of appeals went no farther, as we have seen, and we are disposed to a like limitation. The questions are seriously disputable, as the difference in decision indicates, and we think we should follow the circuit court of appeals and imitate the example of Leeds & Catlin v. Victor Talking Machine Co., (213 U. S., 301, 311, 312). We have not the aid—and its value is inestimable of the judgment of the trial court or of the circuit court of appeals but must consider the question upon conflicting allegations and affidavits. The better course, therefore, is to reserve all questions except that of the identity of the patent in suit with the foreign patents and its termination by their expiration, and, with that reservation, we decide only that there was no abuse of discretion in granting and sustaining the order of injunction.

Affirmed.

## International Union.

# Official Journals. Contents for November and December.

### LA PROPRIÈTÉ INDUSTRIELLE.

#### NOVEMBER.

OFFICIAL, PART. International Union: FRANCE. Circular relative to the execution of the order authorizing the sending to the International Bureau of special envelops for proof of the priority of the creation of designs and models (July 9, 1915).

Domestic Legislation: A. Measures Taken by Reason of the Present State of War. Denmark. Notice concerning the temporary extension of certain terms established by the patent, trade mark, and design laws (Oct. 6, 1915).—Great Britain. (Temporary) Regulation concerning patents, designs, and trade marks, of 1915 (second series) (Oct. 19, 1915).—Straits Settlements. Ordinance amending that of 1871 concerning patents of invention (No. XVI, of Sept. 4, 1915).—B. Ordinary Legislation. New Zealand. Design regulation (June 5, 1912).—The Netherlands. J. Decree establishing a regulation for the Bureau of Industrial Property (No. 558, of Dec. 15, 1914).—II. Decree establishing a regulation concerning patents (No. 559, of Dec. 15, 1915).

UNOFFICIAL PART. Miscellaneous News: Luxemburg. Payment of patent taxes during the war.

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Statistics: Germany. Industrial property during 1914.—Russia. Patents from 1896 to 1912.

#### DECEMBER.

OFFICIAL, PART. Domestic Legislation: A. Measures taken by reason OF THE PRESENT STATE OF WAR. GERMANY. Ordinance prohibiting the making of payments in Egypt and French Morocco (Oct. 14, 1915).—Austria. I. Ordinance making exceptional provisions for terms of priority provided by the Convention of the Union (Dec. 1, 1915)—II. Publication concerning the exceptional provisions taken on the subject of the terms of priority provided by the Convention of the Union (No. 350, of Dec. 1, 1915).—III. Ordinance concerning the extension of the term of priority provided in the agreement of 1907 with Hungary (No. 351, of Dec. 1, 1915).—Publication concerning the exceptional provisions taken on the subject of the terms of priority provided by the Convention of the Union and by the agreement of 1907 with Hungary (No. 352, of Dec. 1, 1915).—V. Ordinance completing that of 1914 extending the term for the production of the documents establishing the right of priority (No. 353, of Dec. 1, 1915).—Great Britain. Patents and Design (Partial Suspension) Act, of Nov. 23, 1915.—B. Ordinary LEGISLATION. THE NETHERLANDS. Decree establishing a patent regulation (No. 559, of Dec. 15, 1915) (continuation and end).—Sweden. I. Law amending the Royal Ordinance of 1884 concerning patents (Aug. 7, 1914).—II. Law amending that of 1889 concerning the protection of certain designs and models (Aug. 7, 1914). III. Law amending that of 1884 concerning the protection of trade marks (Aug. 7, 1914).

UNOFFICIAL PART. Correspondence: Letter from Austria.

Jurisprudence: Austria. Patents; English owner; war measures; license;

infringement; eventual application of the ordinance prohibiting the making of payments in England.—Trade marks; relating to the war; "U. 9"; "Iron Cross"; "Wehrmann in Eisen"; "Hadi-Kréme"; refusal. Trade marks; form of container; protection as model and not as a trade mark. Trade marks; prior use abroad and not in the country; registration by a third party; acceptance. Trade Marks; International Union; Art. 2; dispensation of establishment in the country for the deposit. Trade marks; name of inventor as generic designation; deposit under certain restrictions.

Miscellaneous News: Hungary. Prolongation of the terms of Union priority—Portugal. New measures taken by reason of the state of war.

### LE DROIT D'AUTEUR.

#### NOVEMBER.

OFFICIAL PART. Domestic Legislation: Law modifying the transitory provisions of the law of 1912 concerning copyright (Oct. 29, 1915).

UNOFFICIAL PART. Reports: Concerning the situation caused by the war as to intellectual producers from the point of view of the conditions of social life; the exercise of authors' rights and restrictions of public right.

Jurisprudence: GERMANY. Advertising brochure; alleged piracy; creation of an original work proper; free use permissable.—Austria. Piracy of a statuette of Beethoven; pretended new and original creation.—France. Collaboration between composer and librettist; settlement.—ITALY. Piracy of musical works by reproduction on phonographic discs; exposure for sale of examples not provided with stamps; fraud.

Obituary: Paul Hervieu.

Bibliography: New works (Allart-Carteron, Scalai).

#### DECEMBER.

UNOFFICIAL PART. General Observations: International Statistics of Intellectual Property, 1914 (Germany, Austria, Denmark, Spain, United States, France, Great Britain, Hungary, Italy, Luxemburg, The Netherlands, and Switzerland).

Notice: Subscription notice.

# Adjudicated Patents.

No. 831,178. McClave. Grate. Held valid and infringed. 220 F. R., 143. No. 914,426. King. Rod packing-ring. Held valid, but not infringed. 220 F. R., 171.

No. 931,374. Beckwith. Improvement in heating-stoves. Held valid and infringed. 220 F. R., 173.

No. 1,090,776. Boyce. Motormeter. Held valid and infringed. 220 F. R., 118.

No. 609,954. Briggs. Sheet-feeding mechanism for printing-presses. Claim to construed, and held infringed. 220 F. R., 313.

No. 653,503. Dundon. Door for digesters. Construed and held infringed. 220 F. R., 309.

No. 659,907. White. Sheet-feeding mechanism for printing-presses. Held infringed. 220 F. R., 313.

No. 744,369. Lawson. Loose-leaf binder. Held void for lack of invention. 220 F. R., 345.

No. 777,488. Rhodes. Fish bait or lure. Held valid and infringed. 220 F. R., 304.

No. 778,070. Pitt. Improvement in loose-leaf binders. Held (claims 1 to 9) infringed, and (claim 10) not infringed. 220 F. R., 325.

No. 812,920. Cole. Anatomical footwear. Held void for anticipation by a prior printed publication. 220 F. R., 342.

No. 838,379. Bush. Draft-gearing. Held (claim 1) void for anticipation. 220 F. R., 300.

No. 1,043,854. Luellen. Device for holding and dispensing individual drinking cups. Held valid and infringed. 220 F. R., 335.

No. 1,043,854. Luellen. Device for holding and distributing individual drinking cups. Held valid and infraged. 220 F. R., 335.

No. 12,675 (reissue). (Original No. 827,809). Mitchell. Combined letter sheet and envelope. Held not infringed. 220 F. R., 455.

### Advertisements

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No. 6

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### Switzerland.

## Patents. Prolongation of Terms. Decree of February 11, 1916.

By virtue of a decree issued by the Swiss Federal Council, February 11, 1916, the three years' term, within which to work patented inventions in Switzerland has been extended to a date, to be determined later on by the Council. The prolonged terms for the payment of taxes, claiming priority and filing proof in connection therewith (see 13 P. & T. M. Rev., 329) have been further extended to a date to be fixed later on by the Council.

## Jamaica.

### Patents. Trade Marks. War Measure. Ordonnance of October 12, 1915.

A notice published in La Propriété Industrielle, Jan. 31, 1916, is to the effect that an ordinance was decreed on the above given date, authorizing the Governor to enact during the state of war regulations pertaining to patent and trade mark matters. The provisions of this ordinance are substantially identical with those of the British Act, with the exception, however, that the authority conferred upon the Board of Trade by virtue of the British Act to make such regulations as are necessary devolves on the Comptroller.

# Japan.

## Patents. Trade Marks. Applications. Decrease Due to War.

We are indebted to Mr. Daijiro Ishi, of Tokyo, for the interesting information that the number of patent and trade mark applications received at the Japanese Patent Office has decreased since the beginning of the war approximately twenty per cent for residents, and fifty per cent for foreigners. Taking into account the fact that no applications were received from Germany and Austria-Hungary, the decrease shown in applications received from the other belligerent and neutral powers amounted to approximately thirty per cent.

# Norway.

Patents. Taxes. Extension of Term. "War Measures." Royal Decree of Jan. 7, 1916.\*

(Translation.)

Under the law, dated June 18, 1915, concerning a temporary, further extension of the time for the payment of annual fees for patents as provided in the laws of patents dated June 16, 1885, and July 2, 1910, respectively §6 and §14, the King by decree of January 7, 1916, has provided as follows:

The extended time of three months allowed for the payment of annual fees for patents, as provided in §6, third sub-section of the law of patents dated June 16, 1885, and in §14, second sub-section of the law of patents dated July 2, 1910, is further extended to nine months, for those patents for which the annual fee falls due in the period from and including July 1, 1915, to and including

<sup>\*</sup> Extending prior term for notice of which see 13 P. & T. M. Rev., 291.

March 31, 1916; and to December 31, 1916, for those patents for which the annual fee falls due in the period from and including April 1, 1916, to and including September 30, 1916.

### Canada.

Patents. Regulations. "War Measures Act." Order in Council (Amendatory) of Feb. 14, 1916.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Monday, the 14th day of February, 1916.

#### PRESENT:

HIS ROYAL HIGHNESS THE GOVERNOR GENERAL IN COUNCIL.

His Royal Highness the Governor General in Council is pleased to order that the Orders and Regulations respecting Patents of Invention of date the 2nd October, 1914,\* made under and in virtue of the authority conferred by The War Measures Act, 1914, shall be and the same are hereby amended as follows:

- 1. That Section 5 of said Orders and Regulations be amended by adding thereto "and shall be valid notwithstanding any previous extension or extensions granted either under authority of The Patent Act or these Orders and Regulations."
  - 2. That the following section be added:

"10. In any case in which through circumstances arising from the present state of war, the Commissioner may deem it expedient, he may order that during the continuance of the war and for six months thereafter, neither the failure to construct or manufacture in Canada any patented invention nor the importation of such invention into Canada shall in any way affect the validity of the patent granted in respect of such invention, notwithstanding anything in The Patent Act or in such patent."

(Signed) RODOLPHE BOUDREAU,

Clerk of the Privy Council.

### Austria.

Industrial Property. Priority Terms under Paris Convention. Prolongation.

Applicable to Certain Countries. Notification of Dec. 1, 1915.

Notification of the Minister of Public Works of December 1, 1915, relating to exceptional provisions in respect of the terms of priority fixed under the Paris Convention for the protection of industrial property in favor of subjects or citizens of foreign countries.

## (Translation.)

On the ground of paragraph 3 of Art. 2 and paragraph 5 of Art. 2 of the decree of December 1, 1915 (14 P. & T. M. Rev., 133), having reference to exceptional provisions in respect of the terms of priority fixed under the Paris Convention for the protection of industrial property, due to the state of war, the following notification is made:

I. That the terms of priority are prolonged in Austria at present in favor

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<sup>\*</sup> See 13 P. & T. M. Rev., 11.

of the subjects or citizens of the following countries to the extent indicated below and in favor of subjects and citizens of such countries as:

Brazil, in respect of patent and trade mark applications, insofar as the terms have not expired prior to August 1, 1914, to a day that shall be announced later on.

Denmark, in respect of patent applications, insofar as the terms have not expired prior to August 1, 1914, to January 1, 1916.

Germany, in respect of patent, design and trade-mark applications, insofar as the terms have not expired prior to July 31, 1914, to a day to be announced later on.

Switzerland, in respect of patent applications, the first filing of which has been effected in a foreign country after July 31, 1913, and in respect of design applications, the first filing of which has been effected after March 31, 1914, preliminarily to December 31, 1915.

2. That at the present time there is granted to the Austrian subjects a privilege similar to that indicated in the provisions of Art. 2 of the above mentioned decree, namely:

in Brazil for patent and trade mark applications;

in Denmark for patent applications;

in Germany for patent, design and trade mark applications;

in Switzerland for patent and design applications.

(From Blatt für Patent-, Muster- und Zeichenwesen, Dec. 29, 1915.)

# Portugal and Colonies.

# Patents. Extension of Terms. "War Measures." Decree of Nov. 9, 1915. (Translation.)

Art. 1. The terms for the presentation of oppositions on the part of industries or firms that have abroad either their business or residence against the grant of patents of invention, registry of industrial and commercial marks, and deposits of manufacturers' designs and models shall be for three months counting from the date of the respective notice in the supplement of the Diario do Governo which constitutes the Boletim da Propriedade Industrial.

Only Section. Petitions whereof notice has been published prior to Oct. I of the current year shall be exempted from the provisions of this article, for which petitions those terms being reckoned until December 31, next.

- Art. 2. Applications for inventions or for modifications or alterations of inventions, already patented in the Portugese colonies, may be allowed even when presented subsequent to the term of two years after the publication of the issue of the concession provided in Sec. 1, Art. 4, of the regulation approved by decree of April 1, 1904, when this term shall not have already expired on the first of August, 1914.
- Art. 3. In the case of the terms for the filing of opposition before the Tribunal of Commerce, and on the part of firms whose domicile is without the country, against decisions concerning patents of invention, industrial and commercial marks, and deposits of manufacturers' designs and models, no note shall be made of the time expired from since Aug. 1, 1914, until a date that shall be fixed by decree.
- Art. 4. For the effects of Art. 39 of the letter of the law of May 21, 1896, and Arts. 48 and 49 of the regulation of March 28, 1895, there shall be taken into consideration legal and reasonable obstacles as justification of non-execution or non-compliance of any invention, or that may result from the present state of war.

Only Section. Owners of patents whose domicile or residence is without the country may only enjoy the benefits of this article when like provisions on the part of their country with ours are or shall be established.

Art. 5. The terms of priority established in Art. 4, modified, of the Convention of Paris for the Protection of Industrial Property, that may be in force or begin subsequent to Aug. 1, 1914, shall be prolonged until a date to be fixed by decree after the termination of the present state of war.

Only Section. The provisions of this article shall be applicable only when the deposit on which the right of ownership is based has been effected in a country that has granted or shall grant like advantages to Portugal.

## Transvaal.

Patents. Assignments. Powers. Authentications. Requirements. Interpretation of Sec. 52 of Patents Proclamation, 1902.

We are indebted to Messrs. C. & R. Ovendale of Johannesburg for the following statement of the requirements regarding the registration of assignments of patents in the Transvaal:

"Regarding assignments of Transvaal patents attested and authenticated by notaries public resident abroad, we beg to inform you that no transfer or cession of a Transvaal patent is now registered in the Patent Office unless the same is executed before a notary public of one of the Provinces of the Union of South Africa.

In the opinion of the Commissioner of Patents a deed of assignment executed before a foreign notary public does not constitute a notarial deed within the widest meaning of this expression in Section 52 of the Patents Proclamation, 1902,\* in other words, the mere authentication of the assignor's signature is a mere statement that it was signed in the presence of a notary public and does not make the deed a notarial deed. The Commissioner further points out that registration will not make valid what is invalid.

"It is now necessary to supply the following documents in order to assign a Transvaal Patent:

"I. Power of attorney of the patentee (assignor) authorizing the cession of Letters Patent to the assignee. If this power is executed in the British Dominions it should be notarially authenticated, and if executed outside the British Dominions it must also be legalized by a British Consul.

"2. Power of attorney granted by the assignee authorizing the acceptance of the cession and the registration of the deed of assignment at the Patent Office.

"If the assignment be from or to a company, then the power must comply with the requirements of the memorandum and articles of association of the company, and the granting of such power must be authorized by resolution of the Board of Directors. Ordinarily this will necessitate the passing of a resolution of the Board of Directors, authorizing two directors and the secretary to appoint some person to give or accept cession of the patent from or to the company, assuming, of course, that the articles of association require such documents to be so signed in order to be binding on the company; if otherwise then the resolution will be worded accordingly. A notarial extract from the minutes

<sup>\*</sup>For text of Patents Proclamation, 1902, see 1 P. & T. M. Rev., 276, 316, 344, 376, 408; Sec. 52 appears on p. 378.

of the meeting of the Board of Directors embodying said resolution must be attached to the company's power and bound thereto with the notary's certificate. A letter signed by the Secretary certifying that A. B. and C. D. are two directors of the company (the directors appointed to sign the power) and that he, E. F., is the Secretary of the company, should be sent to the agent, as well as an extract from the articles of association of the company, certified by the Secretary of the company as a true extract, showing that it is within the power of the directors to bind the company to the cession or acceptance, as the case may be, and showing how documents must be executed on behalf of the company.

"The powers of both the patentee (assignor) and assignee can be drawn in favour of the same individual, and both should embody power of substitution.

"The patent should be identified by number, date, and title in all of these documents.

"The Commissioner of Patents has also ruled that an assignment of Letters Patent must take place after the grant of the patent, that is to say, the assignment must bear a date after the grant of Letters Patent.

"It follows that powers of attorney to assign and accept must also be executed after the date of grant of the patent to be ceded."

# Trinidad and Tobago.

Patents. Designs. Trade Marks. "War Measures." Ordinance of Dec. 29, 1915.

The Governor of the British colony of Trinidad and Tobago adopted on Dec. 29, 1915, under the title of "An Ordinance giving to the Registrar of Patents, Designs and Trade Marks the power to make, during the continuance of the war," regulations for the execution of Ordinance No. 76 concerning patents, designs and trade marks. This ordinance reproduces substantially the provisions of the British laws of Aug. 7 and 28, 1914, authorizing the avoidance or suspension of industrial property rights granted to alien enemies of Great Britain. (From La Propriété Industrielle, Jan., 1916.)

# East Africa Protectorate.

Patents. Designs. "War Measures." Ordinance of Dec. 18, 1915.

The Governor of the East Africa Protectorate on Dec. 18, 1915, under the title of "An Ordinance giving to the Governor and to the Governor in Council the power to make, during the war, regulations for the application of the law of India concerning patents and designs (Law V of 1888) insofar as it is declared applicable to the East Africa Protectorate by the ordinance of the Secretary of State, Dec. 20, 1900, the trade marks ordinance of 1912, and the patents and designs ordinance of 1913," adopted an ordinance reproducing substantially the British laws of Aug. 7 and 28, 1914, concerning the avoidance or suspension of alien enemy industrial property rights. (From La Propriété Industrielle, Jan., 1916.)

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# Hungary.

# Industrial Property. Proglongation of Convention Terms. War Measure. Decree of Dec. 1, 1915.

(Translation.)

Decree of the Royal Hungarian Ministry of Commerce of Dec. 1, 1915, No. 81,250-1915, relating to the prolongation of the terms fixed in Art. 4 of the Paris Convention.

By virtue of the authorization contained in section 16 of article 63 of the law of 1912, regarding exceptional measures to be taken in the event of war, I decree, as implied by the decree of the Royal Hungarian Ministry, No. 6981-1914, as follows:

Section 1. The terms of priority fixed in Art. 4 of the Paris Convention of March 20, 1883, for the protection of industrial property, revised at Brussels, Dec. 14, 1900, and at Washington, June 2, 1911, and having reference to patent, design and trade mark applications, in so far as these terms have not expired prior to June 26, 1914, are prolonged for three months, commencing from a day to be fixed by a later decree.

This provision is applicable only in favor of citizens of other countries not belonging to the International Convention for the protection of industrial property, if these countries prolong the priority terms in favor of Hungarian subjects. If, however, any of these countries do not grant this privilege to Hungarian subjects to the extent as mentioned in the first section, a proportionate restriction shall be applicable in respect of the citizens of the countries in question.

A notice to be published in the official journal will determine to what an extent the terms of priority are prolonged in favor of citizens of other countries in accordance with the provisions of the second paragraph.

Section 2. If the applicant has been prevented through war-events from observing any of the priority terms for patent, design and trade-mark applications, as fixed by Art. 4 of the Paris Convention, revised at Brussels, Dec. 14, 1900, and at Washington, June 2, 1911, he may overcome the consequences of his neglect by a plea in justification.

This provision likewise applies to the terms that have already terminated prior to the coming into force of this decree.

The plea in justification, if it be allowed, shall be to the effect that the application is to be considered as having been filed in due time within the priority term.

The plea in justification shall be filed within three months from the time that the obstacle has ceased to exist, or, in the event that the obstacle ceased to exist prior to the day of the notification mentioned in the fifth subsection, it shall be filed within three months reckoned from this day. However, this plea shall be filed under any circumstances not later than three months from the day to be fixed later on by decree. The application shall be filed simultaneously with the plea in justification. The Application Division of the Royal Hungarian Patent Office shall pass on the plea in respect to patent matters and the Royal Hungarian Minister on design and trade matters, to whom the petitions are to be submitted that have been filed with the Chamber of Commerce and Trade.

These provisions are operative in favor of citizens of countries other than those adhering to the International Convention for the protection of industrial property only in connection with such kind of applications, for which a similar

favor is granted in those countries to Hungarian subjects according to a notification to be published in the official journal.

Section 3. The applicant shall be considered as a citizen of that country wherein he has his domicile, if he does not prove citizenship that would secure for him another more favorable procedure.

Section 4. The decree shall come into force on the day of its publication (Dec. 3, 1915). (From Blatt für Patent-, Muster- und Zeichenwesen, Jan. 26, 1916.)

# Trade Marks. Pictorial Representation of Hungarian Trooper on Horseback. False Indication of Origin. Deceptive. Annulment. Decision.

The Minister of Commerce, in his decision No. 1090 of July 14, 1914, ruled that the trade mark consisting of the pictorial representation of a Hungarian trooper on horseback and registered under the No. 27,237 at Budapest be annulled. In giving the reasons for his ruling he stated that registrant's goods, if so marked, would be apt to create in the mind of the consumers the belief that the same were manufactured in Hungary and that these goods would be all the more so deceptive in view of the fact that the owner of the mark has no establishment within the domains; that it is a generally adopted fundamental principle in commerce, that a merchant employing national emblems, pictorial representations of persons prominent in political life, etc., does so with the intention of drawing the public's attention to the fact that the goods are of a national origin, and finally that in judging a trade mark, the view-point of the consumers must be chiefly taken into consideration, which in this case undoubtedly would be to the effect that the goods were of Hungarian origin. (From Blatt für Patent-, Muster- und Zeichenwesen, Jan. 26, 1916.)

# Cuba.

Trade Marks. National. Tobaccos and Tobacco Products for Export.

Law of July 16, 1912.

(Translation.)

LAW CREATING A NATIONAL GUARANTEE STAMP OR BAND FOR EXPORT TOBACCOS.

(July 16, 1912.\*)

I, GENERAL JOSÉ MIGUEL GÓMEZ, Constitutional President of the Republic of Cuba.

MAKE KNOWN:

That the Congress has passed, and that I have approved, the following law:

Art. 1. The Executive Power shall have printed a certificate of origin, under the form of a special band or stamp of National guarantee, in two sizes, whereof the one shall be affixed to every box or receptacle of manufactured tobaccos, and to every package of tobacco for cigarettes, and the other shall be affixed to packages or to any other receptacle containing cigars intended for exportation.

Art. 2. The stamps and bands mentioned in the preceding article shall be printed within the country, following selection, and shall have the following

 $<sup>^{\</sup>bullet}$  For description of the marks adopted in conformit with this law, see 13 P. & T. M. Rev., 133.



dimensions: seventeen and one-half centimetres long by five centimetres and a half wide for tobacco boxes and packages of tobacco for cigarettes, and fifteen centimetres in length by one and one-half centimetres in width for packages or any other like receptacle containing cigarettes.

Art. 3. These stamps shall be affixed by the export manufacturers in the following manner: when they are to be used on tobacco boxes, they shall be affixed to the lid by extending over the left side as far as the base, or on the front side; on packages of cigarette-tobacco or on packages of cigars, they shall be affixed on a very noticeable place on the receptacle, but in such a manner that, under one form or another, it be absolutely necessary to break the band in order to extract the contents.

- Art. 4. The use of these stamps and bands is obligatory on every manufacturer of tobaccos, of cigars, and of cigarette-tobacco that is located in the Republic and who is engaged in the exportation of these products.
- Art. 5. The manufacturer shall obtain these stamps or bands through a request that he shall address to the Fiscal Zone wherein he shall indicate in figures and in words the number of stamps of which he has need for his monthly exportation.
- Art. 6. Manufacturers that export manufactured tobaccos, cigars, and cigarette-tobaccos, and who have obtained stamps for their exportation, shall forward to the Fiscal Zone a report concerning the stamps that they have secured, the tobaccos, cigars, and cigarette-tobaccos that they have exported, and concerning the number of stamps corresponding to that of the previous month, that they wish for their exportation.
- Art. 7. The Fiscal Zone shall have a register of the stamps sent to manufacturers, and shall take account, in the statistics of exportation that the Customs authorities shall send to it, and by other means at its disposal, as to whether the reports presented by virtue of the preceding article are trustworthy.
- Art. 8. Every manufacturer that stands convicted according to the present law for exporting stamps without being able to show that they have been used in the manner prescribed shall be punished for each thousand or fraction of a thousand stamps that he may have used improperly with a fine of five hundred pesos, or with six months' imprisonment, or with these two penalties together.
- If the infraction concerns one thousand stamps the matter shall be within the sphere of the Correctional Judges, and if it concerns more than a thousand stamps, the matter shall concern the Judges of Instruction, and a fine greater than one thousand five hundred pesos or imprisonment for more than one and one-half years, or a penalty greater than the two penalties together, cannot be inflicted.
- Art. 9. The value of these stamps is as follows: two pesos per thousand for those that are affixed on boxes of tobacco and packages of cigarette-tobacco, and one peso per thousand for those that are used on a package of cigars.
- Art. 10. Fifty per cent of the income from these stamps and from the fines imposed shall be set aside by the Government for the printing of these stamps and for the prosecution of imitators; and the Executive Power is authorized to deliver up to fifty per cent of this income to the Union of Manufacturers of Tobacco and Cigars of the Island of Cuba, if this latter is devoted to the prosecution of frauds under the form prescribed by the Government.
- Art. 11. The share set aside for the "Union of Manufacturers of Tobacco and Cigars of the Island of Cuba" shall be paid monthly by the Government to the Directorate.

- Art. 12. The Fiscal Zone shall not delay in any case for more than twenty-four hours in honoring the applications for stamps that manufacturers address to it, this in order to cause no inconvenience to their interests and to their exports.
- Art. 13. The Executive Power shall forward fac-similes of these stamps to every country wherein the Republic has official representation, of every class, in order that the fac-similes be exposed in the office of these representations and in public places, and it shall command that every falsification be prosecuted before the authorities of the place wherein it shall have been committed.
- Art. 14. The Executive Power shall charge the Consular representation of the Republic to announce abroad the procedure adopted by the present law for establishing the authenticity of Cuban tobacco and to distinguish it from others.
- Art. 15. The present law shall become effective on the twenty-fourth day after the publication that shall have been made thereof in the Official Gazette of the Republic.

IN WITNESS WHEREOF I command that the present law be executed in all its provisions.

GIVEN at the estate known as "America," at Calabazar, the sixteenth of July, nineteen hundred and twelve (July 16, 1912).

(Signed) JOSÉ M. GOMEZ.

(Signed) MANUEL SANGUILY,

Secretary of State.

(From La Propriété Industrielle, Jan., 1916.)

# Argentine Republic.

Trade Marks. Descriptive. "Bromose." Pharmaceutical and Chemical Terminology Not Subject to Protection. Decision.

Imitation of a mark.—The title granted to distinguish chemical, pharmaceutical etc., products does not protect a medicinal preparation.—The denominations of pharmaceutical specialties cannot constitute a mark.—The designation wherein the name of one of the basic products appears in combination is not a fancy name.—Dismissal of the case without costs.

MAURICE ROBIN V. ZELMAR LECSINSKI AINÉ

Appeal from the Chamber.

Buenos Aires, Oct. 21, 1916.

Being examined on appeal, the cause brought by Maurice Robin against Zelmar Leczinski for fraudulent imitation of a mark of manufacture results in the following:

It has been proven by the documents of folios 142, translated in folios 159, that the French word Bromovose was registered in France by the Corporation Brochard et Compagnie as a mark of manufacture for distinguishing a chemical and pharmaceutical product on the 18th of March, 1909, and that said composition was presented by Mr. Zelmar Leczinski at the National Department of Hygiene of the Republic on the 21st of December, 1910, with the like name of Bromovose, and that that office authorized its sale on the 21st of August, 1912 (Report of folios 225).

It has been proven that the composition Bromovose is being sold in the

pharmacies of Buenos Aires since the year 1910 (Cf. declaration of the druggists Badaraco, on folio 68, Soulignac, on folio 76, and invoices of folios 46 and 47) and is being prescribed by physicians (declarations of Dr. Llobet, on folio 116, of Dr. Güemes, on folio 125, and of Dr. Castro Escalada, on folio 140).

It has not been proven, nor has it been attempted to prove, that the pharmaceutical composition prepared by Borchard et Compagnie—with the ingredients whose combination the National Department of Hygiene has accepted—has in chemist's shops and in medical practice a usual denomination other than Bromovose.

This denomination is evidently formed from the roots of the words *Bromo* and *ovum* (egg) in order to indicate the principal elements of the combination, following the practice of manufacturers of chemical and pharmaceutical products, and it is not, therefore, a mere fancy name without any relation to the nature of the product.

Under these conditions the word *Bromovose* is not a mark of manufacture, but a term that the public has the right to use for naming a determined pharmaceutical composition which is known by no other denomination. There can be, then, no criminal intention alleged against anyone employing said name for denoting the product that bears it.

The fact that the plaintiff, Maurice Robin, may have registered in the Patent Office a similar word, *Bromose*, as a mark of manufacture to distinguish chemical, pharmaceutical, veterinary, antiseptic, photographic and tannic products, does not gainsay the legal employment of the only name known by the public for the beforementioned medicament, for the reason that no mark of manufacture can produce such legal effect.

The object of a mark is to distinguish one commodity from others of different manufacture or ownership, but not to deny the distribution of the others, nor obligate the public to alter its terminology.

On the other hand, on registering the word *Bromose* on the 15th of May, 1909, Robin did not indicate it as the name of a pharmaceutical specialty, nor even mention the existence of the specialty that, later, on October 3d, 1911, he presented for the analysis of the Department of Hygiene, which authorized its sale on the 4th of May, 1912.

It cannot, then, be alleged that the Patent Office conceded to him the exclusive use of the word *Bromose* to distinguish a medicinal preparation composed of bromine and albumen, and to exclude the use of any other like word, although it might be intended to designate bromine and its derivatives. In order that a word be accepted as "fancy," it must be invented, and must contain no indication of the nature or origin of the product.

Such is the doctrine admitted by Argentine and foreign jurisprudence. Bromose is not a fancy name for those chemical and pharmaceutical products wherein bromine is a component part.

It can only be used as a fancy name on wares whereof such metaloid is not a part. And, as Rubin registered the word as a mark for a determined number of different products, the validity of this registration is legally confined to all those that do not contain bromine as an important component.

His right to criminally prosecute imitators of the word Bromose has the same limitation.

Other interpretation of the title of the appellant would lead to the absurdity of giving him the right of denouncing all manufacturers and merchants that manu-

facture or distribute bromine, bromal, bromides, bromates, and other composites of said metaloid.

The same Robin understands that the name Bromose does not exclude the existence of names of identical derivation, in as much as he has given to another of his preparations the name of Bromome (Report of folio 108). It is known that, in chemical nomenclature, compositions bear identical names as to their radical, when the principal component is the same, and are only different in their terminations. The terminations, oso, osa, ico, ato, ito, ina, ol, are of common use in chemical terminology to indicate the nature of the combination into which enters the part designated by the radical, slight differences of sound or of orthography thus sufficing to distinguish those composed of others. Sulphate, sulphite, bisulphate, sulphur, sulphuric, sulphorous, are terms that may serve as example of this system.

Consequently, it being a question of chemical and pharmaceutical preparations, it cannot be said that there is confusion of names, when these—admitted that they are identical in their radical—differ in their terminations, even if it be by a single letter.

To ignore this conclusion would lead to conceding the legal possibility of a manufacturer or merchant acquiring the monopoly of a vast class of chemical and pharmaceutical products by only registering the technical name of one component with a slight variant of orthography, a monopoly not authorized by the trade mark law, and expressly prohibited by the patent law as concerns pharmaceutical preparations (Art. 4).

In conclusion, it does not appear that the parties (defendants) have acted with the intention of deceiving the public respecting the nature of the wares in question.

These considerations suffice for the determination of the present case, it being limited to examining whether or not there is a crime and criminal intent in the acts alleged against the accused, there being no question as to civil actions that may be brought by those interested.

For these reasons the sentence appealed from is overruled, and the accused, Zelmar Leczinski, is absolved, without costs.

Let notice be given, and the case returned to the lower court, where the records will be found.

(Signed) E. VILLAFANE,
A. URDINARRAIN,
DANIEL GOYTIA,
J. N. MATIENZO.

(Translation from 16 Patentes y Marcas, 467.)

## Sweden.

Designs. Models. Application. Priority. Law (Amendatory) of Aug. 7,

(Translation.)

LAW AMENDING ART. 20 OF THE LAW CONCERNING THE PROTECTION OF CERTAIN DESIGNS AND MODELS OF JULY 10, 1899. (Aug. 7, 1014.)

Art. 20 of the law concerning the protection of certain designs and models: of July 10, 1899, shall be in the future of the following tenor:

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In whatever concerns designs protected in a State granting reciprocity for designs registered in the Kingdom, the King may decree that: if any person has made application in the Kingdom for the registration of a design that he has already deposited abroad, the application made in Sweden may be considered, as regards any other application, as well as the restrictions mentioned in Art. 3, as if it had been filed simultaneously with the application made in the foreign country, provided that the application has been made in Sweden before the expiration of a certain term—which may be fixed by the decree either at four months at most, counting from the date on which protection was solicited for the same design in the foreign State, or at three months at most, counting from the date on which the competent authority has there given public notice that this protection was granted—and provided that the depositor in Sweden has made claim of such right of priority within a term and in the form that the King may order in the decree. (From La Propriété Industrielle, Dec., 1915.)

# Patents. Applications. Priority. Working. Law (Amendatory) of Aug. 7, 1914.

(Translation.)

LAW AMENDING ART. 25\* OF THE ROYAL ORDINANCE OF MAY 16, 1884, CONCERNING PATENTS OF INVENTION. (Aug. 7, 1914.)

Art. 25 of the Ordinance of May 16, 1884, concerning patents of invention shall in the future be of the following tenor:

Art. 25. In whatever concerns inventions protected in a State that accords reciprocity to an invention patented in Sweden, the King may decree that:

- I. If any one file in the Kingdom a patent application relative to an invention for which he has already solicited a patent abroad, the application made in Sweden may be considered, as regards any other application, as well as the restrictions mentioned in Art. 3, as if it had been filed simultaneously with the application made in the foreign country, provided that the application shall have been made in Sweden before the expiration of a certain term to be fixed by decree, and which may be either twelve months at most counting from the day on which the patent for the same invention has been applied for abroad, or three months at most after the competent authority has made it known publicly that the patent has been allowed, and provided that the applicant in Sweden may have claimed such right of priority within the term and in the manner that the King shall order in the decree.
- 2. If a subject of a foreign State or a person established in that State, or who possesses there an industrial or commercial establishment that he operates actually and not as a matter of form, enjoys the protection of an invention in Sweden as well as in the foreign State, the working of the invention in this latter country shall be considered as if it had been made in Sweden, in whatever concerns the consequences of the non-working of the invention in Sweden. (From La Propriété Industrielle, Dec., 1915.)

<sup>\*</sup> For translation of Art. 25, as amended June 5, 1909, see 8 P. & T. M. Rev., 318.

## Trade Marks. Law (Amendatory) of Aug. 7, 1914.

#### (Translation.)

LAW AMENDING ARTS. 4\* AND 16\* OF THE LAW OF JULY 5, 1884, CONCERNING THE PROTECTION OF MARKS OF MANUFACTURE AND COMMERCE. (Aug. 7, 1914.)

Arts. 4 and 16 of the Law of July 5, 1884, concerning the protection of marks of manufacture and commerce shall in the future be of the following tenor:

Art. 4. There may not be registered:

- I. Marks that are composed only of figures, letters, or of words not distinguished by a form sufficiently peculiar for there being occasion to consider the mark as a distinctive figurative mark. The registration cannot, however, be refused if the mark is composed of words capable of being considered as a denomination especially created for certain wares indicated in conformity with Art. 3, and if this denomination has not for purpose to designate the origin, nature, use, quantity, or price of the merchandise;
- 2. Those that wrongly contain a personal or commercial name other than that of the depositor, or the name of a property belonging to a third party;
- 3. Those that contain, without authorization of the interested party public crests or seals;
  - 4. Those that contain drawings or other reproductions of a scandalous nature;
- 5. In conclusion, marks identical to marks already deposited, or whose deposit has been solicited through the required formalities for the account of third parties, and those that show such a resemblance to other marks that, save differences of detail, the marks may easily be confused in their *ensemble*. The deposit shall not be refused, however, if the resemblance concerns the marks mentioned in Art. 7, following, or if the two marks are intended for different classes of merchandise.
- Art. 16. The King may, following treaty with a foreign State, and on condition of reciprocity, decree that the protection of marks shall be likewise granted, by virtue of the present law, not only to persons exploiting outside the country an industry of the kind mentioned in Art. 1, but also to an association established without the country, in order to safeguard the interests of merchants, although the association does not exploit the industry hereinbefore mentioned. The provisions of the law shall be, in consequence, applicable in this case through the observance of the special rules, following, in whatever concerns the deposit of marks:
- I. The application for deposit shall be accompanied by a certificate showing that the depositor has fulfilled the formalities provided in the foreign State for the protection of the mark;
- 2. The party interested, to whom the registration shall have been granted shall have an attorney resident in Sweden, who shall act in his name in all matters concerning the mark; the former shall be obliged, in consequence, as well at the presentation of the application as at each change of attorney, to declare the name and domicile of the attorney under penalty, in case it should be proven that he has not observed this formality, of having the judge on notice that shall be given him thereof designate ex officio an attorney;
- 3. The mark shall not be protected to a greater degree, nor for a longer term, than in the foreign State.

<sup>•</sup> For translation of Arts. 4 and 6, as amended March 5, 1897, see 2 P. & T. M. Rev., 762.

As concerns marks registered in States granting corresponding rights to Swedish marks, the King may order in addition the following provisions:

- 1. The mark, if it is not contrary to decency or to public order, shall be registered in the same form under which it is protected in the foreign State;
- 5. If any person files in Sweden a mark for which he has already solicited the registration in the foreign State, the application made in Sweden shall be, in contradistinction to other applications, considered to have been made simultaneously with the application in the foreign State, provided that the application in Sweden has been made before the expiration of a certain term that may be fixed either at four months at the most, counting from the date on which the application for registry was deposited in the foreign State, or at three months at most, counting from the date of the publication of the competent authority announcing that the registration has been granted, and provided that the depositor in Sweden has made claim of such a right of priority within the term and in the form that the King may order in the decree;
- 6. If the registration has been refused for the reason given in Art. 4, par. 5, the depositor shall furnish proof, on summons before the courts on the part of the person or persons previously using the mark declared or registered, that the said mark was originally used by him, but that a third party has appropriated it, and the court may declare that the depositor is authorized to obtain registration, with the exclusive right of use of the mark for the wares on which he was affixing it at the time that the provisions concerning reciprocal protection went into force. The application drawn up to this effect shall be receivable no later than six months after before mentioned time;
- 7. Every mark that shall have been duly registered in the foreign State before the entry into force of reciprocal protection, and which is composed exclusively of figures, letters or words not susceptible of being registered separately under the terms of Art. 4, shall enjoy, after their registration in Sweden, as long as they are protected in the foreign State, a special protection consisting in this, that others cannot make use of the same figures, letters or words as a mark for the same kind of merchandise, unless they have already made use thereof prior to the entry into force of reciprocal protection. The registration of these marks shall not, however—save in whatever concerns the marks for iron and those for wood—prevent any one from using as a mark the initials of his own name or those of his firm. (From La Propriété Industrielle, Dec., 1915.)

# Australian Commonwealth.

Patents. Regulation Concerning Secret Patents. Statutory Rule 1915, No. 267 (Amendatory), of Dec. 31, 1915.

REGULATIONS UNDER THE PATENTS ACT, 1903-1909.\*

I, Sir Arthur Stanley, Governor of the State of Victoria and its dependencies in the Commonwealth of Australia, acting as the Deputy of the Governor-General in accordance with the provisions of the Constitution, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the Patents Act, 1903-1909,\* to come into operation forthwith. The Provisional Regulations (Statutory Rules, 1915, No. 82) made under the said Act on the 27th day of May, 1915, are hereby repealed.

<sup>\*</sup> For text see 2 P. & T. M. Rev., 679, 757, 769 (particularly Secs. 96-100), 788; vol. 8, p. 3085.



Dated this 31st day of December, One thousand nine hundred and fifteen.

(Signed) A. L. STANLEY,

Deputy of the Governor-General.

By His Excellency's Command, (Sgd.) W. M. Hughes, Attorney-General.

The Patents Regulations, 1912 (Statutory Rules, 1912, No. 76\*) are amended—
(a) by inserting after Regulation 33 the following heading and regulations:
"Applications for Patents for Inventions Assigned to the Commonwealth."

#### Secret Patents.

"33A. When it has been decided by the Minister for Defense that it is advisable to take out a secret patent for any invention assigned under section 95 of the Act, and an application for the patent has been made on Patents Form A-11, accompanied by a written direction of the Minister for Defense, under section 96 of the Act, the Commissioner shall not communicate the application or any documents relating thereto to any member of his staff other than an examiner or deputy examiner, who shall make the required investigations and reports required by the Act to be made in the case of other applications for patents.

Procedure on applications for secret patents.

"338. Unless and until the Minister for Defense by notice in writing directs that the invention directed to be kept secret need no longer be kept secret—

(a) No copy of any specification or any other document or drawing relating thereto shall in any manner whatever be published or open to the inspection of

the public.

- (b) The application for the patent, and the acceptance of any specification relating to the invention shall not be advertised, nor shall the grant of the patent for the invention be open to opposition under section 56 of the Act; but the Commissioner shall cause a patent to be sealed in respect of every such invention as soon as may be after the acceptance of the complete specification relating thereto.
- (c) Every secret patent shall be registered in a confidential register at the Patent Office, and no details or particulars relating thereto shall at any time be published as required by the Act for ordinary patents. No entry shall be made in the ordinary Register of Patents in respect of any patent or any assignment thereof.
- (d) No fees shall be payable in respect of any secret patent, and every secret patent, notwithstanding the non-payment of such fees, shall remain in force for the full period of 14 years from its date.

Procedure on pending applications directed to be kept secret.

"33c. When an application has been made otherwise than as provided by Regulation 33A for a patent of invention, and the application is still pending, and a written direction under section 96 of the Act is furnished to the Commissioner by the Minister for Defense, the provisions of Regulations 33A and 33B shall, as far as is practicable, having regard to the date of the written direction, apply to the application and to all documents relating thereto.

"33D. In the event of any secret patent being re-assigned to the inventor by

<sup>•</sup> For text see 10 P. & T. M. Rev., 3960, 3987.



the Commonwealth, the Minister for Defense shall by notice in writing direct the Commissioner that the invention directed to be kept secret need no longer be kept secret, and thereupon it shall be removed from the confidential Register of secret patents, and entered in the ordinary Register of Patents; all fees that would have been thereafter payable if the same had not been for a secret patent shall be paid in respect thereof; and the patent shall remain in force only for the same term, and subject to the same conditions as to the payment of fees and otherwise as if it had not been a secret patent"; and

(b) by inserting in the Second Schedule, after Form A-10, the following Form: (For lack of space the "Form A-11 is omitted. Ed.) (From 24 Australian Official Journal of Patents, Jan. 25, 1916, p. 59.)

## Trade Marks. Descriptive. "Nobby." Rejection. Decision.

Trade Mark.—Application for the registration of the word "Nobby" as a Trade Mark in respect of Rubber Vehicle Tyres.—Word having direct reference to character or quality of goods.—Refusal by Registrar.—Appeal to Law Officer.—Appeal Dismissed.—Trade Marks Act, 1905-1912, Sec. 16 (1) (d).

The United States Tire Company on 28/4/14 made an application for the registration of the word "Nobby" as a trade mark in Class 40 in respect of rubber vehicle tyres. Objection was made by the examiner that the word "Nobby" was not registrable as a trade mark as it was an ordinary word and was not a word having no direct reference to the character or quality of the goods to which it was to be applied.

The matter was heard before the Registrar of Trade Marks who gave the following decision: This is an application for the registration of a trade mark consisting of the word "Nobby" in Class 40 in respect of rubber vehicle Objections to the acceptance of the application were stated by the examiner on the following grounds: (a) The mark is not a registrable trade mark, the word "Nobby" indicating smart, elegant, showy, not being a word having no direct reference to the character and quality of the goods in respect of which the mark is sought to be registered; (b) subject to the removal of objection (A), the number of the class heading should be inserted as "40" throughout the documents. Having heard the applicant company, by its agent, I am of opinion that the examiner's objections must be sustained. The meaning of the word "Nobby" as set out in the Century Dictionary is—Having an aristocratic appearance, showy, elegant, fashionable, smart. The word is, therefore, in my opinion, a word having direct reference to the character or quality of the goods in respect to which its registration is sought, and therefore does not come within the provisions of Section 16 (1) (d) of the Trade Marks Act, 1905-1912. Order—Application refused."

From this decision the applicant appealed to the Law Officer. The appeal was heard before me on the 4th October, 1915. The word "Nobby" is recognized in several dictionaries of authority as a word belonging to the English language and is classed as an adjective and is shown to have several meanings, amongst others, those set out in the Registrar's decision. That being the case I am bound to the conclusion that "Nobby" is a word belonging to the English language and that it is not an invented word and that it would have some direct reference to the character or quality of any goods to which it was applied It was pointed out that the word "Nobby" is a slang word, and the case of in re Crook's Trade

Mark 31 R.P.C. (1914) 79 was cited as an authority for the registration of a slang word having a meaning. The word in Crook's case was the word "Swankie," but no question was raised as to whether the word had reference to the character or quality of the goods to which it was applied. The only question considered was the question whether the word "Swankie" was so like the word "Swan" as to be likely to lead to confusion. The case, therefore, did not decide that a slang word having reference to character or quality could be registered, and, in my opinion, it has no real bearing on the question in this case. I am of opinion that a slang word is nevertheless a word, and that being a word a slang word is not (except under special circumstances) qualified to form a trade mark, unless it can be classed as an invented word or a word having no direct reference to character or quality The word "Nobby" is many years old, and cannot now be classed as an invented word, and it clearly has reference to character or quality. Many of its stated meanings could hardly be suggested as being qualified to form trade marks, such for instance as "elegant," "fashionable," or "smart." If the meanings of a word could not be registrable as trade marks, it is difficult to see how the word which includes those meanings could itself be registrable as a trade mark. As no special circumstances have been shown, I am of opinion that the word "Nobby" is not qualified to form a registrable trade mark in this case, I am of opinion that the Registrar's decision was right. I decide therefore that the appeal be dismissed and that the Registrar's decision be affirmed, and that the application ought not to be accepted. (From 10 The Australian Official Journal of Trade Marks, 746.)

## Trade Marks. Enemy Trade Marks. Suspension.

Under and by virtue of the provisions of the Patents, Designs and Trade Mark Act (No. 15), 1914,\* and Regulations † "the Minister or his representative, may, on the application of any person, and subject to such terms and conditions, if any, as he thinks fit, order the avoidance or suspension, in whole or in part, of the registration, and all and any rights conferred by the registration, of any trade mark the proprietor whereof is a subject of any State of war with the King, and the Minister, before granting may \* \* \* "

An order of W. M. Hughes, Attorney General of the Commonwealth, dated January 11, 1916, and published in the Commonwealth of Australia Gazettee, January 12, 1916, comprises a somewhat lengthy list of registered trade marks declared suspended under the provisions and Regulations of the Patents, Trade Marks and Designs Act, 1914-1915. Some of these marks have become known throughout the world as the distinctive marks of manufacturers as applied to their goods. Among those ordered suspended are such well-known marks as: "PEBECO" for tooth paste; "JOHANN FABER" and "APOLLO" for lead pencils; "MERCEDES" and "DMG" for motors, carriages, non-dirigible balloons, etc.; "ARISTOL," "ASPIRIN," "HELMITOL," "HEROIN," "MESOTHAN," "PROTARGOL," "TRIONAL," "LYSOL," "ANTIPYRINE," "MIGRAININE," "SANATOGEN" for pharmaceutical products; "KARL ZEISS," "JENA" for optical instruments; "KOH-I-NOOR" and the pictorial representation of the famous diamond of that name for artists' material, etc.

<sup>\*</sup> For Act relating to Trade Marks see 13 P. & T. M. Rev., 142. 7 For Rules relating to Trade Marks see 13 P. & T. M. Rev., 200.



## United States.

Copyright. Statistics for the Fiscal Year, 1914-1915.

The following statistics of the business of the Copyright Office for the fiscal year 1914-1915, were compiled from the report of the Librarian of Congress to the House of Representatives. The total entries during the fiscal year ending June 30, 1915, were 115,193, showing a decrease of 7,961 registrations as compared with the previous year and a distribution among the official classes as follows: Books, 31,926; periodicals, 24,938; lectures, sermons, addresses, 142; dramatic or dramatic-musical compositions, 3,797; musical compositions, 21,406; Maps, 1,772; works of art, models or designs, 2,965; drawings or plastic works of a scientific or technical character, 513; photographs, 10,523; prints and pictorial illustrations, 12,935; motion-picture photoplays, 2,757; motion-pictures not photoplays, 193; renewals, 1,326. The total numbers of articles deposited with the Office during the fiscal year was 203,767, showing a decrease of 7,961 deposits as compared with the previous year and a distribution among the official classes as follows: Books, 55,152; periodicals, 49,696; lectures, sermons, addresses, 142; dramatic or dramatic-musical compositions, 4,136; musical compositions, 40,437; maps, 3,530; works of art, models or designs, 2,969; drawings or plastic works of a scientific character, 682; photographs, 19,357; prints and pictorial illustrations, 20,811; motion-picture photoplays, 6,596; motion-pictures not photoplays, 259; miscellaneous (unclassified articles), none. The earned fees paid into the Treasury for the year were \$111,922.75, showing a decrease of \$8,296.50 as compared with the previous year, and the amount expended for salaries, stationery and sundries was \$103,773.30, the excess of fees received over expenditures being \$8,149.36.

## Patent Office. Personnel. Salaries. Act of Feb. 16, 1916.\*

[Public—No. 16—64TH Congress.] [S. 900.]

An Act Amending sections four hundred and seventy-six, four hundred and seventy-seven, and four hundred and forty of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four hundred and seventy-six of the Revised Statutes be, and the same is hereby, amended to read as follows:

"Sec. 476. There shall be in the Patent Office a Commissioner of Patents, one first assistant commissioner, one assistant commissioner, and five examiners in chief, who shall be appointed by the President, by and with the advice and consent of the Senate. The first assistant commissioner and the assistant commissioner shall perform such duties pertaining to the office of commissioner as may be assigned to them, respectively from time to time by the Commissioner of Patents. All other officers, clerks, and employees authorized by law for the office shall be appointed by the Secretary of the Interior upon the nomination of the Commissioner of Patents, in accordance with existing law."

<sup>\*</sup>This bill was passed during the final sessions of the last Congress, but the draft of same becoming lost it did not receive the signature of the President. See 13 P. & T. M. Rev., 187.



SEC. 2. That section four hundred and seventy-seven of the Revised Statutes be amended to read as follows:

"Sec. 477. The salaries of the officers mentioned in the preceding section shall be as follows:

"The Commissioner of Patents \$5,000 a year.

"The First Assistant Commissioner of Patents, \$4,500 a year.

"The Assistant Commissioner of Patents, \$3,500 a year.

"Five examiners in chief, \$3,500 a year each."

Sec. 3. That so much of section four hundred and forty of the Revised Statutes as follows the words "In the Patent Office," and refers to said office only, be amended to read as follows:

"One chief clerk, who shall be qualified to act as a principal examiner.

"One librarian, who shall be qualified to act as an assistant examiner.

"Five law examiners.

"One examiner of classification.

"One examiner of interferences.

"One examiner of trade marks and designs.

"One first assistant examiner of trade marks and designs.

"Six assistant examiners of trade-marks and designs.

"Forty-three principal examiners.

"Eighty-six first assistant examiners.

"Eighty-six second assistant examiners.

"Eighty-six third assistant examiners.

"Eighty-six fourth assistant examiners; and such other examiners and assistant examiners in the various grades as the Congress shall from time to time provide for."

Approved, February 15, 1916.

# United States Practice.

#### Trade Marks.

(222 O. G., 727.)

Court of Appeals of the District of Columbia.

IN RE HERBST.

Decided November 20, 1015.

RES ADJUDICATA-SUBSEQUENT DECISIONS IN OTHER CASES IMMATERIAL.

Where in a trade mark interference the Patent Office decided that the mark was unregistrable to an applicant and no appeal to the court was taken, *Held* that the question is *res adjudicata* and will not be reconsidered upon a new application merely because the applicant thinks a later decision by the court of appeals shows that the Office was wrong.

Mr. L. S. Bacon and Mr. J. H. Milans, for the appellant.

Mr. M. E. Porter, for the Commissioner of Patents.

#### ROBB. J.

Appeal from a decision of the Patent Office refusing to register the words "Old Judge" as a trade mark for whisky.

Appellant first applied for the registration of this mark on April 19, 1905. Thereafter an interference was declared between that application and two others. The Patent Office decided that no one of the parties was entitled to registration.

No appeal was taken from this decision and it therefore became final. Subsequently Herbst, the appellant here, began the prosecution of his application exparte. Registration was refused by the Patent Office on the ground that the decision in the interference proceeding was res adjudicata and, on appeal to this court, that decision was affirmed. (In re Herbst, 32 App. D. C., 269.) We said:

Appellant's remedy, if he was aggreed by the decision of the Commissioner, was by way of appeal to this court. When the time within which an appeal might have been taken from that decision expired the decision became final and was res adjudicata, and appellant had no more right to prosecute his original application before the Examiner of Trade Marks than he would have had to prosecute his application before the Examiner for the second time after an adverse decision by the Commissioner in an ex parte case.

The present application was filed on April 12, 1913. Appellant now contends that under a decision of this court rendered subsequent to the decision of the Patent Office in said interference proceeding the decision of the Patent Office in that proceeding was wrong, and that—

thereafter Herbst filed this application, which seemingly was a proper thing for him to do.

We cannot agree with appellant's contention. Whether the former decision of the Patent Office was right or wrong is not the question. It was final and conclusive of every question that was or might have been presented and determined in that case (Blackford v. Wilder, 28 App. D. C., 535; United States, ex rel. Newcomb Motor Co. v. Moore, 30 App. D. C., 464; in re Herbst, 32 App. D. C., 269). As pointed out in the Herbst case appellant's remedy, if he was dissatisfied with the decision of the Patent Office in the interference proceeding, was by way of appeal to this court. Because, as he now believes, he would have prevailed had he taken such an appeal, in no way changes the situation. He has had his day in court and is not entitled to another for the consideration of the questions previously determined.

The decision is affirmed. Affirmed.

# Trade Marks.

(222 O. G., 728.)

Court of Appeals of the District of Columbia.

THE STANDARD BREWERY COMPANY OF BALTIMORE CITY V. INTERBORO BREWING COMPANY, INC.

Decided November 29, 1915.

TRADE MARK-CANCELLATION.

Where an applicant for cancellation of a registration does not set up facts showing a superior right in himself to use the mark, but depends upon the showing of a superior right in a third party, *Held* that the application for cancellation should be dismissed.

Mr. Archibald Cox and Mr. E. W. Brewington, for the appellant.

Mr. W. H. Small and Mr. Melville Church, for the appellee.

#### Robb, J.

This is an appeal from a final decision of the Patent Office sustaining ap-

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pellee's application for the cancellation of appellant's registered trade mark "Bismark" for beer.

In its application for cancellation appellee alleges that it has adopted for use and has used upon bottled beer in interstate commerce this mark, but it does not aver that its date of adoption antedates that of appellant. It does aver, however, that the Massachusetts Breweries Company, a third party, has a right to said trade mark superior to that of appellant. The Patent Office tribunals, upon the showing made by appellee as to the superior right to this mark of said third party, the Massachusetts Breweries Company, sustained the application of appellee.

Section 13 of the Trade Mark Act of February 20, 1905, (33 Stat., 724), authorizes any person who may deem himself injured by the registration of a trade mark to apply to the Commissioner of Patents to cancel such registration. In McIlhenny's Son v. New Iberia Ex. of T. P. Co. (3 App. D. C., 337) we ruled that the right of a party to file such a petition is dependent upon a showing of interest, and that his petition must contain a statement of fact on his jurisdictional question. There the petition failed to state the use of the mark upon goods of the same descriptive properties as those to which the registrant had applied it. Here, while the petition does contain this averment, it would be fatally defective without the additional averment as to use by a third party, for the reason that the petition does not aver that, as between the registrant and appellant, appellant was the first to adopt and use the trade mark. The question presented, therefore, is whether the statute contemplates that a party who, upon his own showing, has no right to the use of a trade mark, may nevertheless prosecute in the Patent Office an application for the cancellation of such trade mark. We must answer this question in the negative. An application for the registration of a trade mark must follow the procedure prescribed by law and the rules of the Patent Office. The Commissioner of Patents represents the public and where in due course an application has been granted and a trade mark registered, the Commissioner may assume that if any person has a superior right to the use of the mark he will invoke the provisions of section 13 of the Trade Mark Act, to the end that the registration, may be canceled. We do not think the statute contemplates that a mere interloper may invoke its provisions. The statute was intended as a shield to the innocent, rather than as a foil to the guilty. The appellee, on its own showing, has no right whatever to the use of this trade mark. How, then, can it be injured by its registration by the appellant? It is not concerned with the question whether the appellant's right to the mark is superior to that of the third party. If that party deems itself injured by the registration it may invoke the provisions of this statute, but certainly an interloper and wrong-doer has no standing to invoke it. Appellee's petition, therefore, should have been dismissed.

The decision of the Patent Office is reversed. Reversed.

#### Trade Marks.

(222 O. G., 729.)

Court of Appeals of the District of Columbia.

IN RE UNITED DRUG COMPANY.

Decided November 29, 1915.

TRADE MARK-NAME OF CORPORATION UNREGISTRABLE.

The word "Stork" Held unregistrable as a trade mark in view of the exist-

ence of a corporation named The Stork Company, (citing The Asbestone Co. v. The Philip Carey Mfg. Co., 41 App. D. C., 507; 200 O. G., 857).

Mr. Jos. R. Edson and Mr. Arthur W. Murray, for the appellant. Mr. William R. Ballard, for the Commissioner of Patents.

## SHEPARD, C. J.

United Drug Company appeals from a decision of the Commissioner of Patents denying registration of the word "Stork" as a trade mark for rubber nipples.

The registration was denied because the Commissioner had on file a certificate of incorporation granted in the State of Maine, in December, 1904, to a corporation entitled The Stork Company.

The case is governed by the decision in The Asbestone Company v. The Philip Carey Manufacturing Company (41 App. D. C., 507).

It is not important that The Stork Company is not engaged in the manufacture of rubber nipples. The purpose of its incorporation seems, however, to have been the manufacture of waterproof goods.

The corporate name of The Stork Company is protected by the express provisions of the Trade Mark Act.

The Commissioner was right, and his decision is affirmed, and this decision will be certified to the Commissioner of Patents.

Affirmed.

## International Union.

## Official Journals. Contents for January.

#### LA PROPRIÉTÉ INDUSTRIELLE.

OFFICIAL PART. International Union: States of the Union Jan. 1, 1916. Domestic Legislation: A. Measures taken by reason of the present STATE OF WAR. GERMANY. Notice concerning the safeguard of interests for the national defense in the case of patent applications during the war (Oct. 10, 1915).— AUSTRIA. I. Correction. II. Ordinance concerning the exceptional provisions taken on the subjects of terms of priority in favor of Danish subjects (Dec. 24, 1915).—Great Britain. I. Notice of the Board of Trade to patent agents.— II. Ordinance concerning the payment of taxes in patent, design and trade mark matters in Great Britain and in enemy countries (Dec. 7, 1915).—HUNGARY. I. Notice extending to Spanish and Swedish subjects exceptional measures concerning industrial property (No. 13,221, of March 8, 1915).—II. Notice extending to subjects of the German Empire exceptional measures concerning industrial property (No. 20,472, of April 16, 1915).—III. Ordinance concerning the extension of the terms of priority established in Art. 4 of the Convention of the Union (No. 81,250, of Dec. 1, 1915.—IV. Publication concerning the prolongation of the terms of priority established in Art. 4 of the Convention of the Union (No. 81,251, of Dec. 1, 1915).—V. Ordinance concerning the prolongation of the term of priority established in the agreement controlling commercial and traffic relations with Austria (No. 81,252, of Dec. 1, 1915).—VI. Publication concerning the prolongation of the term of priority established in the agreement controlling commercial and traffic relations with Austria (No. 81,253, of Dec. 1, 1915).—VII. Ordinance concerning the prolongation of the term of priority for the payment of patent taxes (No. 87,639, of Dec. 23, 1915).—VIII. Notice extending to the subjects of France and Great Britain the exceptional measures concerning the prolongation of the term for the payment of patent taxes (No. 56,603, of Dec. 23, 1915).—IX. Publication concerning the prolongation of the terms of priority established in Art. 4 of the Convention of the Union (No. 86,245, of Dec. 23, 1915).—X. Ordinance establishing, by reason of the state of war, exceptional provisions relative to the civil procedure and to non-continuous procedure (No. 1380, of April 29, 1915).—Jamaica. Law authorizing, for the duration of the war, the Governor to make regulations in patent and trade mark matters (Oct. 12, 1915).—Sweden. Ordinance according a delay for the payment of certain patent taxes (No. 507, of Dec. 17, 1915).—B. Ordinary Legislation. Cuba. Law creating a national guarantee stamp or band for export tobaccos (July 16, 1915).

UNOFFICIAL PART. Jurisprudence: Argentine Republic. Trade mark containing a foreign commercial name; protection of the commercial name without conditions of reciprocity and without distinctions of nationality.

Miscellaneous News: Germany. Prolongation of the duration of patents.—Australian Commonwealth. Suspension of marks belonging to subjects of enemy countries.—Finland. Taxes on patents belonging to subjects of countries at war with Russia.—Greece. Renewal of trade marks during the war.—Switzerland. Prolongation of the terms of priority provided for in the Convention of the Union.

Statistics: GERMANY. Industrial property in 1914 (continuation and end).

#### LE DROIT D'AUTEUR

OFFICIAL PART. International Union: List of States belonging to the Union on Jan. 1, 1916.—Acts in force between the Union countries.

Domestic Legislation: The Netherlands. Order establishing the general administrative provision provided in Art. 50f of the Law of 1912, concerning copyright, amended by that of Oct. 29, 1915 (Oct. 30, 1915).

British Colonial Legislation: I. AUTONOMOUS COLONIES. A. COLONIES NOT YET HAVING ACCEPTED THE CODIFICATION OF 1911. I. CANADA. (a) Act concerning copyright (Revised Statutes of 1906, Chap. 70).—(b) Regulations and forms of the Ministry of Agriculture relative to the Act concerning copyright (April 12, 1887).

UNOFFICIAL PART. General Considerations: Glance over the whole of the legislation of the British Empire in Copyright matters.

Miscellaneous News: International Union. Collapse, under common pressure, of an enterprise for musical piracy, known as "war publication."

## International Union.

States of the Union for the Protection of Industrial Property, January 1, 1916.

(La Propriété Industrielle, Jan. 31, 1916.)

#### PRINCIPAL UNION

(Paris Convention of March 20, 1883, revised at Brussels in 1900 and at Washington in 1911.)

Germany and Colonies.

Austria. Hungary,

Bosnia and Herzogovina.

Belgium. Brazil. \*Cuba.

Denmark and the Faroe Islands.

Dominican Republic.

Spain.

United States.

France, Algeria and Colonies.

Great Britain,

\*Australian Commonwealth,

Ceylon,

New Zealand.

Trinidad and Tobago.

Italy.
Japan.
Mexico.
Norway.

The Netherlands, Dutch Indies, Surinam.

Curação.

Portugal, with the Azores and

Madeira. \*Serbia.

\*Sweden.

Switzerland.

Tunis.

#### LIMITED UNIONS.

(Arrangements of Madrid of April 14, 1891, Part 1 revised at Washington in 1911, and Part 2 at Brussels in 1900, and at Washington in 1900.)

1. Suppression of False Indications of Origin.

Brazil. \*Cuba.

Spain. France, Algeria and Colonies.

Great Britain, Ceylon, New Zealand.

Trinidad and Tobago.

Portugal, with the Azores and

Madeira. Switzerland.

Tunis.

(Le Droit d'Auteur, Jan. 15, 1916.)

2. International Registration of Marks of Manufacture or of Commerce.

Austria.

Hungary,

Bosnia and Herzogovina.

Belgium. Brazil.

\*Cuba. Spain.

France, Algeria and Colonies.

Italy.

Mexico.

The Netherlands, Dutch Indies, Surinam,

Curação.

Portugal, with the Azores and

Madeira. Switzerland.

Tunis.

# States of the Union for the Protection of Literary and Artistic Works, January 1, 1914.

(Le Droit d'Auteur, January 15, 1916.)

Germany, with the countries of Protectorate.

Belgium,
Denmark, with Faroe Islands.
Spain, and Colonies.

Japan.
Liberia
Luxem
Monac

France, with Algeria and her Colonies.

Great Britain, with her Colonies and Possessions and certain Protectorates.

Haiti Italy. Liberia.
Luxemburg.
Monaco.
Norway.
Netherlands, with the Dutch East
Indies.
Curação and Surinam.
Portugal, with Colonies.

\*The countries marked with an asterisk have not yet adhered to the Acts adopted at Washington, June 2, 1911; they are still bound by the Paris Convention of 1883, and by the Arrangement of 1891 concerning the international registration of marks, as modified at Brussels in 1900, and by the text of 1891 of the Arrangement concerning the suppression of false indications of origin.

Sweden. Switzerland.

Tunis.

# Adjudicated Patents.

No. 42,077. Ashley. (Design Patent) Design for an inkstand. Held valid and infringed. 220 F. R., 899.

No. 45,249. Baker. (Design Patent) Designs for sets of character-blocks. Held void for lack of invention. 220 F. R., 918.

No. 436,916. Gathright. (and) No. 452,268. Tabulating mechanism for type-writers, and improvements thereon. Held valid and (claims 4 and 6 of) former infringed, and latter not infringed. 220 F. R., 880.

No. 633,348. Simmons, Forgham and Bennett. Coal unloading and distributing apparatus for use in producing burnt-clay ballast. Held not infringed. 220 F. R., 887.

No. 686,964. Bennett and Forgham. Apparatus for use in producing burnt-clay ballast. Held not infringed. 200 F. R., 890.

No. 714,880. Ellis. A paint and varnish remover and process of making same. Held valid and also infringed as to claims 6, 7 and 8. 200 F. R., 685.

No. 737,796. Vogel. Flushing apparatus. Held valid but not infringed. 220 F. R., 939.

No. 714,880. Ellis. Paint-remover. Held valid and infringed. 220 F. R., 681. No. 745,157. Coleman. Automatic starting systems for motor-cars. Held valid and infringed. 220 F. R., 927.

No. 801,754. Vogel. Flushing apparatus. Held valid and (claim 5) infringed. 220 F. R., 939.

No. 842,827. Coleman. Automatic starting systems for motor-cars. Held valid but not infringed. 220 F. R., 927.

No. 902,452. Robbins. Davit-supporting means for sharp-stern boats. Held valid and infringed. 220 F. R., 943.

No. 956,285. Champ. Bottle-filling machine. Held valid and infringed. 220 F. R., 675.

No. 963,352. Blackman. Sheet-metal junction-box. Held void for lack of invention. 220 F. R., 912.

No. 973,902. Woerheide. Cleat for securing prepared roofing. Held valid and infringed. 220 F. R., 674.

No. 988,229. Tilt. Auxiliary automobile side spring or shock-absorber. Construed and held not infringed. 220 F. R., 921.

No. 1,011,892. Williams. Wind-shield for vehicles. Held not for useful invention and also, as limited by the prior art, not infringed. 220 F. R., 669.

No. 43,338. Grelle. (Design Patent) Design for a five-light lamp-post. Held valid but not infringed. 221 F. R., 68.

Nos. 948,233 and 948,234. MacClenny. Body-braces. Held valid and infringed. 221 F. R., 73.

No. 627,430. Levy. Process and apparatus for the production of etched printing plates. Held not infringed. 221 F. R., 648.

No. 706,736. Fessenden. Improvements in apparatus for wireless telegraphy, if conceded validity, held not infringed. 221 F. R., 629.

Nos. 758,574 and 758,575. Werk. Oil-press mats. Held not infringed. 221 F. R., 644.

No. 780,078. Votey. Improvement in pianos. Held void for lack of invention. 221 F. R., 666.

No. 794,991. Linn. Motor-control system. Held valid and infringed as to claims 1 to 4. 221 F. R., 657.

No. 832,114. Wysong. Abrasive apparatus. Held void for lack of patentable novelty and invention. 221 F. R., 680.

No. 850,681. Smith. Fire-alarm device. Held valid and infringed. 221 F. R., 673.

No. 899,583. Whitaker. Gas-pump. Held valid and infringed. 221 F. R., 639. No. 918,247. Wysong. Abrasive apparatus. Held void for lack of patentable novelty and invention. 221 F. R., 682.

Nos. 923,048, 923,049 and 932,122. Hutchinson. Each for an alarm or signaling apparatus for automobiles. Held void for lack of invention in view of the prior art. 221 F. R., 634.

No. 966,765. Read. Cake-mixing machine. Held infringed. 221 F. R., 662. No. 1,047,849. Stenz. Sample-card. Held valid but not infringed, on show for preliminary injunction. 221 F. R., 639.

Nos. 593,206, 593,208, 607,448, 618,458 and 637,458. Groebli. All relating to embroidering-machines operated by jacquard mechanism, and parts thereof. Held valid as limited by the prior art, but not infringed. 222 F. R., 71.

No. 705,732. Bone. Reinforced-concrete retaining-wall. Held valid and infringed. 221 F. R., 944.

No. 800,172. Ross and McDonald. Passenger-car. Held void for lack of invention. 221 F. R., 939.

No. 800,172. Ross and McDonald. Improvement in passenger-cars. Held not infringed. 221 F. R., 943.

No. 538,809. Wolhaupter. Railway-tie plate. Held (claim 8) valid and infringed. 222 F. R., 261.

No. 651,435. Chipley. Railway-brake shoe. Held valid and infringed. 222 F. R., 327.

Nos. 691,332 and 721,644. Wolhaupter. Each for improvements in railwaytie plates. Held valid and infringed. 222 F. R., 261.

No. 633,564. Sundh. Electric controller. Held valid and infringed. 222 F. R., 334.

No. 741,385. Terry. Steam-turbine. Held valid and infringed. 222 F. R., 207.

No. 747,686. Creveling. System of electrical regulation adapted for use in lighting railroad-cars. Held valid and infringed. 222 F. R., 310.

No. 13,398 (reissue). (Original No. 789,053.) O'Conner. Perforated note-sheet guide for player-pianos. Construed and held valid. 222 F. R., 276.

No. 851,247. Newberry. Waterproof Portland cefnent and process for making same. Held valid and infringed. 222 F. R., 288.

No. 871,735. Rashkin. Hatchway-doors. Held valid as against the defense of prior use and also infringed. 222 F. R., 293.

No. 881,743. Thomson. Dynamo suspension for car-lighting systems. Held void for prior use and lack of invention. 222 F. R., 318.

No. 926,518. Thomson. Electric car-lighting system. Held void for lack of invention, in view of the prior art. 222 F. R., 320.

No. 673,419. Byers. Draft-rigging for railway-cars. Construed and held not infringed. 222 F. R., 517.

No. 681,870. Buente. Fireproof floor construction; (and) No. 768,284. Kahn. Combined steel and concrete beam. Held (claim 4 of former, and the latter) not infringed. 222 F. R., 506.

No. 742,031. Ihlder. Automatic motor-starter. Held valid and infringed. 222 F. R., 501.

No. 862,897. Forsythe. Expanded metal and process of making the same. Held valid but not infringed. 222 F. R., 514.

No. 950,402. Phillips. Washing-machine. Held valid and infringed. 222 F. R., 512.

No. 633,941. Arrott. Dredger for pulverulent material. Held void for anticipation. 222 F. R., 671.

No. 633,941. Arrott. Dredger for pulverulent material. Held void for anticipation by prior use of an unpatented device. 222 F. R., 679.

No. 37,501. Lane. (Design Patent) Design for a piano-case. Held valid and infringed. 222 F. R., 902.

No. 580,151. Barnard. Fluid-distributor. Held not infringed. 222 F. R., 915. No. 665,711. Stauf. Method for desiccating milk, etc. Held not anticipated, discloses patentable invention, and entitled to a liberal construction, valid and infringed. 222 F. R., 911.

No. 666,711. Stauf. Process for desiccating milk, etc. Held valid and infringed. 222 F. R., 913.

No. 665,977. Pumphrey. Coin-operated mechanism. Held (claims 5 and 6) valid and infringed; Claim 24, if valid, not infringed. 222 F. R., 956.

No. 759,711. Heim. Steam-jet smoke-consumer. Held void for lack of invention in view of the prior art. 222 F. R., 914.

No. 826,112. Power. Apparatus for exhibiting moving pictures. Held valid but not infringed. 222 F. R., 933.

No. 874,174. Elliott and Faber. Turbine, relaiting to apparatus especially adapted to removing scale from boiler-tubes. 222 F. R., 946.

No. 808,442. Ferguson and Benthall. Peanut-picker, (and) No. 890,401.

Benthall. Peanut-stemmer. Held (both) not anticipated, valid and infringed. 222 F. R., 918.

No. 899,583. Whitaker. Gas-pump. Held valid and infringed. 222 F. R., 916. No. 908,271. Jones. Peanut-picker and stemmer. Held void for anticipation by prior use; also not infringed. 222 F. R., 918.

No. 924,966. Clemons. Road-grading machine. Held valid and infringed. 222 F. R., 906.

No. 959,601. Power. Fireproof magazine for film-reels. Held not anticipated, valid, and infringed. 222 F. R., 933.

No. 983,032. Elliott and Faber. Turbine, (and) No. 983,034. Elliott. Motor. Held not infringed if conceded validity. 222 F. R., 946.

No. 993,723. Shook. Water-heater. Held void on ground that the patentee was not the original and first inventor. 222 F. R., 950.

No. 533,403. Williams. Ties for wire structures. Held void for want of invention. 223 F. R., 342.

No. 551,614. Brothers. Cable-crane with gravity-anchor. Held valid but not infringed. 223 F. R., 359.

No. 755,187. Tiffany. Dies for making ties for wire structures. Held void for want of invention. 223 F. R., 342.

No. 893,105. Slater. Machine for making outlook or window envelops. Held valid and infringed. 223 F. R., 327.

No. 644,151. Hodgman. Mechanical movement designed for use on Miehle printing-press. Held valid and infringed. 223 F. R., 647.

No. 857,770. Thibodeau. Candy-pulling machine. Held valid and infringed. 223 F. R., 651.

. No. 650,792. Hansen. Improvement in underframes for railway-cars. Held (claim 1) void for lack of invention. 223 F. R., 542.

No. 832,384. Hildreth. Improvements in candy-pulling machines. Held (claim 4) void. 223 F. R., 545.

No. 857,770. Thibodeau. Improvements in candy-pulling machines. Held infringed. 223 F. R., 545.

No. 958,484. Evans and Wichmann. Rotary printing frame: Held (claim 3) not infringed. 223 F. R., 539.

No. 754,242. Rose. Type-writer. Held (claims 1 and 5) void for anticipation. 223 F. R., 779.

No. 984,327. Taigman, Wald and Britsch. Motor-controlled apparatus. Held valid and infringed. 223 F. R., 787.

No. 1,044,944. Taigman. Pulley-brake for motor-controlled apparatus. Held valid and infringed. 223 F. R., 787.

Nos. 13,436 (reissue) and 1,020,656. Perkins. Starch-glue and process for making same. Held valid and infringed. 223 F. R., 792.

No. 614,279. Walker. Pivoted or titling bin. Held not anticipated, valid and infringed. 224 F. R., 516.

No. 645,698. Weldon. Apparatus for mercerizing. Held valid and infringed. 224 F. R., 515.

No. 659,906. Weldon. Rotary dyeing-machine. Held valid and infringed. 224 F. R., 515.

No. 659,910. Baldwin. Improvement in weighing-machines. Held void for lack of invention. 224 F. R., 743.

No. 714,880. Ellis. Composition for removing paint and varnish. Held not anticipated, valid and infringed. 224 F. R., 481.

No. 758,340. Thompson. Recording-safe for holding coins. Held (claim 4) valid. 224 F. R., 506.

No. 765,616. Elliott. Improvement in shoe-button-fastening machines. Held void for lack of novelty. 224 F. R., 502.

No. 783,126. McCaskey. Credit-accounting appliance. Held (claim 23) void for anticipation. 224 F. R., 495.

·No. 793,779. Fisher. Recording coin-safe. Held valid. 224 F. R., 506.

No. 811,183. Stickney. Type-writing machine. Held not anticipated, valid and infringed. 224 F. R., 464.

No. 811,859. Marsh. Electric resistence element. Held not anticipated, valid and infringed. 224 F. R., 464.

No. 928,199. Hoffman. Garment pressing machine. Held not anticipated, valid and infringed. 224 F. R., 484.

No. 937,573. Bane and Crane. Improvement in computing-scales. Held void for lack of invention. 224 F. R., 500.

No. 948,233. MacClemmy. Body-brace. Held valid. 224 F. R. 497.

No. 948,234. MacClemmy. Body-brace. Held valid. 224 F. R., 497.

No. 959,008. Henderson. Improved scaffold-supporting means. Held (claims 1 and 3) valid. 224 F. R., 452.

No. 000,535. Fisher. Relating to a recording-safe for holding coins. Held (claim 7) valid. 224 F. R., 506.

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No. 939,629. Reed. Concrete-mixer. Held valid. 225 F. R., 764.

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No. 1,001,618. Austin. Change-speed gearing for automobiles. Held not anticipated and valid. 225 F. R., 982.

## Advertisements

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# Patent and Trade Mark Review

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A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

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MATTER THAT APPEARS IN THE REVIEW, NO RESPONSIBILITY IS ASSUMED ON ACCOUNT OF ERRORS OR INACCURACIES WHICH MAY OCCUR THEREIN.

## Chile.

### Patents. Applications. Fees. Proposed Increase.

From advices received from our Santiago correspondents, we learn that there is a proposed law now before the Congress providing for an increase in patent fees, the result of the decrease of revenue due to the European war.

#### Trade Marks. Proposed Law. Status.

Recent reports from Santiago indicate that action on the proposed trade mark law (see 14 P. & T. M. Rev., 131), due to other and more pressing matters, has been postponed, probably, until June next.

#### France.

# Patents. Military and Naval Inventions. Expropriation by the State. Proposed Law.

In the February issue of La Propriété Industrielle appears a translation from the Board of Trade Journal, giving advices of a proposed French law—adopted by the Chamber of Deputies and under consideration by the Senate—providing that the State may appropriate such inventions "as are of interest to the army or navy, and are the subject of a patent application or of a patent already delivered." In accordance therewith, the inventor shall relinquish all rights of exploitation, receiving in compensation an indemnity that shall be fixed by three arbiters. In addition it is proposed that the inventor be excused from publishing his patent "when this would present inconveniences or danger to the State. French citizens or foreigners domiciled in France will not be able to have patented abroad inventions that are of interest to the navy, navigation, aviation, aeronautics. armament, artillery, telegraphy, explosives, artillery powder, and military engineering."

# Italy.

## Industrial Property. Statistics, 1910-1914.

In 14 Bollettino della Proprietà Intelletuale, Fasc. 19-20, are given in detail the statistics concerning industrial and intellectual property in Italy for the years 1910 to 1914, inclusive, from which we take the following figures of particular interest to the readers of the Review:

The total number of patents of invention—original, of addition, prolongation, etc.—issued to residents was, for the year 1910, 2514; 1911, 2466; 1912, 3409; 1913, 3842; and 1914, 2955; to foreigners, 1910, 5246; 1911, 4484; 1912, 6321; 1913, 6718; and 1914, 4725; the total for the five years being, 1910, 7760; 1911, 6950; 1912, 9730; 1913, 10560; and 1914, 7680.

Of trade marks registered during the year 1914, 591 were domestic and 392 foreign, a total of 983. In addition there were 81 international marks registered.

Designs and models of manufacture to the number of 170 were registered during the same year, and 2555 copyright application was allowed, in addition to 46 renewals.

# Spain.

Patents Applications. Priority. Convention. Extension of Term. "War Measures." Decree of Feb. 25, 1916.

#### (Translation.)

Art. 1. The priority term allowed for patents, insofar as it concerns cases wherein the term referred to had not elapsed on July 31, 1914, shall be extended until a date to be fixed at the conclusion of the war.

Art. 2. Such privilege is granted upon the basis of reciprocity to those countries that shall decide to grant a like benefit to Spain.

The above decree for whose translation we are indebted to Mr. Francisco Elzaburu, of Madrid, was signed on Feb. 25, 1915.

## International Union.

#### Trade Marks. Statistics for 1915.

A comparison of the number of marks internationally registered at Berne during the fiscal year ended December 31, 1915, with those registered the previous year discloses the most damaging effect the war has so far had on industrial matters of this kind. There were altogether registered during the past year 658 marks, disclosing a decrease of over 50 per cent in the number of registrations effected as compared with the previous year, and the second lowest number of marks registered within the past ten years.

The registrations effected during the past year were apportioned among the countries adhering to the Union as follows: France, 230; Switzerland, 123; Netherlands, 120; Spain, 62; Austria, 43; Italy, 34; Belgium, 28; Brazil, 6; Portugal, 5; Hungary, 3; Cuba, 3; Mexico, 1. (Compiled from Les Marques Internationales, January 31, 1916).

# Japan.

Patents. Designs. Trade Marks. Utility Models. Statistics for 1913.

PATENTS.

The total number of patent applications filed in Japan during the year 1913 was 7,342, and the total number of patents granted was 1,945.

With respect to countries of origin, the applications filed during 1913 were divided as follows: Japan, 6,412; Great Britain, 265; Germany, 217; United States, 215; France, 91; Switzerland, 27; Italy, 23; Austria, 17; Norway, 14; Sweden, 12; Belgium, 11; Russia, 10; and all other countries, 28.

#### DESIGNS.

During the year 1913, 2,846 applications for Designs were filed and 1,003 were registered.

With respect to countries of origin, the applications filed were divided as

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follows: Japan, 2,796; Germany, 22; Great Britain, 12; United States, 3; Switzerland, 3; Egypt, 2; Turkey, 2; France, 1; Italy, 1; China, 1; Tunis, 1; India, 1; and Hong Kong, 1.

#### TRADE MARKS.

The total number of trade marks filed was 11,077, and 5,661 were registered during the same year. As to the countries of origin, the applications filed were divided as follows: Japan, 10,199; Great Britain, 280; Germany, 252; United States, 92; India, 56; France, 48; China, 44; Switzerland, 30; Austria, 13; Belgium, 10; Sweden, 9; Italy, 7; and all other countries, 37.

#### UTILITY MODELS.

The surprisingly large number of 16,316 utility model applications was filed during the year 1913, of which 3,757 were registered. Divided as to countries of origin, Japan filed 16,294 applications, while Great Britain leads all foreign countries with 6 applications, and the United States, Germany, France, follow in the order named. (Compiled from La Propriété Industrielle, March 31, 1916.)

#### Cuba.

Patents. Designs. Models. Oppositions. Publication. Procedure. Decree of September 9, 1915.

(Translation.)

#### DECREE No. 1238.

Whereas: As is prescribed in Clause 1 of Art. 68 of the Constitution of the Republic, it is incumbent on the Executive to issue provisions, orders and regulations necessary for the better execution of what the law establishes.

Whereas: In compliance with the provision in Clause 4 of Art. 12 of the Royal Decree of Aug. 21, 1884, which is the organic law concerning ownership of marks, he that in accordance with its prescriptions obtains the corresponding certificate of ownership of marks, designs, or industrial models may have the right to oppose the grant of certificates in these classes whenever what is applied for is similar to that of his own ownership, or may have semblance thereto or sufficient indication to deceive the buyer.

Whereas: The exercise of this right of opposition does not appear to be regulated in the said Royal Decree of Aug. 21, 1884, nor in any of our laws on the subject referring to administrative procedure.

Whereas: That deficiency is easily corrected by having applications for marks, designs, or industrial models published, and by fixing the terms wherein oppositions to the same may be established and carried out.

Upon recommendation of the Secretary of Justice,

I DECREE

I. From the publication of this Decree, whenever the grant of a certificate of ownership of marks, designs, or industrial models is solicited by the usual petition in the Department of Agriculture, Commerce and Labor, there shall be prepared a notice by the Trade Mark and Patent Official stating the name and surname of the applicant, a résumé in abstract of the application for the mark, design, or in-

dustrial model, and date of the petition, to the end of proceeding with its publication for a period of ten days in the Gaceta Oficial de la Republica and in the Boletin Oficial of the Department of Agriculture, Commerce and Labor.

- 2. This publication shall take precedence and, counting from the date of its insertion in the official periodical, there shall be granted a term of thirty days in order that there be filed those oppositions with which Par. 4 of Art. 12 of the Royal Decree of Aug. 21, 1884, is concerned, or any others that may be according to law.
- 3. An opposition having been presented in due time and form, the Department, acknowledging the same, shall hear, if it deem it necessary, the applicant, and, within a term that shall be advisedly designated and as early as possible, shall order the taking of those proceedings that it shall esteem necessary, either from among the propositions of either of the parties, or from those that it shall deem proper, and shall admit the documents presented. Upon the expiry of such term and of the extensions that the Department may have seen fit to grant, and all the other legal proceedings having been observed, it shall proceed to issue the corresponding decision, which likewise shall be published in the Gaceta Oficial.
- 4. In each case there shall appear record of the fulfillment of the enactment of Art. I, by means of a report duly authorized by the respective Official, wherein shall appear the number and date of the *Gacetas* in which were published the notices of the application and the final decision in the case.
- 5. This Decree shall become effective from the date of its publication in the Gaceta Oficial.

Given at Habana, in the Presidential Palace, on the ninth of September, nineteen hundred and fifteen.

> (Signed) M. G. Menocal, President.

C. de la Guardia, Secretary of Justice. (From Gaceta Oficial, Habana, Sept. 16, 1915.)

# Great Britain.

Industrial Property. Enemy Holders. Confiscation. "War Measures."

Amendatory Act Concerning Trade With the Enemy of Jan. 27, 1916.

(Translation\*.)

LAW (amendatory) Concerning Trade With the Enemy (5 and 6 Geo., Ch. 105, of Jan. 27, 1916).

(4) I. In cases wherein it appears expedient, the Board of Trade may, by an ordinance, confiscate, by virtue of the amendatory act concerning trade with the enemy, 1914, all property, personal or real (comprising all rights founded upon law or equity that may be found in or result from the said property, personal or real), belonging to an enemy or to an enemy subject, or held or administered for him or for his account, as well as the right of assigning this property, and it may, by the same ordinance or by a subsequent ordinance, confer on the depositary the powers necessary for selling, administering, or treating this property as the Board of Trade shall deem proper.

(6) If the benefit of a patent application filed by an enemy or by an enemy subject, or for his account or in his favor, is confiscated as result of an order rendered by virtue of the amendatory act concerning trade with the enemy, 1914, or by virtue of the present act, the patent may be delivered to the depositary in the capacity of patentee, and it may, despite what is provided in Sec. 12 of the Act of 1907 concerning patents and designs, be sealed by the Comptroller General of Patents, Designs, and Trade Marks, and every patent thus delivered to the depositary shall be held to be a property placed in his possession by the above mentioned ordinance.

# Trade Marks. Trade Names. "Original Samuel Allen." Secondary Meaning not Acquired. Decision.

#### TRADE NAME

The words "Original Samuel Allen" held not to have acquired the secondary meaning alleged by the plaintiff.—Sale of business and goodwill.—Action to restrain purchasers from using name.—Allegation of fraudulent conspiracy against other Defendants.—Name held not to have acquired secondary meaning indicating Plaintif's goods.—Action dismissed with costs.

Samuel Allen was from 1888 sole partner in a firm, Frederick Allen & Sons, manufacturers of confectionery and similar goods. In 1901 the business and goodwill of the firm were assigned to Frederick Allen & Sons, Ld.; in 1904 they were assigned by that Company to Samuel Allen & Sons Ld., by whom, in 1906, they were assigned to D. From March, 1907, to May, 1910, Samuel Allen was an undischarged bankrupt, and was not carrying on business. January, 1910, he took an office in the business premises of a Company, L., who manufactured confectionery and similar goods and sold them with labels representing that they were the goods of the "Original Samuel Allen." Allen was the manager of the manufacturing department of the Company. In August, 1910, he transferred the business carried on by him in 1910, to a Company, Samuel Allen, Ld., with a reservation that, in case the Company were wound up, the same should revert to him. In 1912, the Company was liquidated, and a Company, Allen's Confectionery Company, Ld., was formed. There was no direct assignment of the goodwill of Samuel Allen Ld., to the latter Company. That Company employed Samuel Allen, and sold its goods mainly under the name of "Original Samuel Allen." In 1914, D. formed a Company with the name "Original Samuel Allen & Sons, Ld.," and Samuel Allen brought an action against that Company to restrain it from the use of that name, and also to restrain two signatories to the Memorandum of Association from allowing the Company to remain registered under that name, the Plaintiff alleging that the signatories had fraudulently conspired to form the Company.—Held, that, for the Plaintiff to succeed, it was necessary for him to show that the words "Original Samuel Allen" had lost their original meaning and acquired a secondary meaning, indicating goods produced by the Plaintiff in the course of the business carried on by him in 1910, or, possibly, also the products manufactured in succession by the Companies that he had controlled; that the plaintiff had failed to prove that the words had acquired that secondary meaning; and that the claim against the signatories failed.

<sup>\*</sup>For lack of the Official Copy, the provisions of this Act are retranslated from the French text appearing in La Propriété Industrielle of Feb., 1916.

The action was dismissed with costs. Allen v. Original Samuel Allen & Sons Lp., p. 33. (From The Illustrated Official Journal (Patents), Dec. 31, 1915, p. 73.)

## Dutch Indies. Surinam. Curacao.

Trade Marks. Royal Ordinance (Regulation for Industrial Property in the Colonies, 1912) of Aug. 12, 1912.

#### (Translation.)

ROYAL ORDINANCE CONCERNING MARKS OF MANUFACTURE IN THE COLONIES AND IN
THE AUXILIARY BUREAUS OF INDUSTRIAL PROPERTY.

(Aug. 29, 1912, Staatsblad, 1912, No. 284.)

- Art. 1. (1) The Department of Agriculture, Industry and Commerce in the Dutch Indies is charged, as Auxiliary Bureau of the Bureau of Industrial Property, created by Art. 1 of the Trade Mark Law,\* with the supervision of industrial property in the Dutch Indies; in Surinam and in Curaçao the office of the Procurer-General of the Court of Justice of these colonies is charged with this service.
- (2) The Auxiliary Bureau is at the same time conservator of marks deposited, and is charged with the publication of the marks of manufacture and of commerce in the colony in which it is established.
- (3) The Auxiliary Bureau shall furnish to the Bureau of The Hague all the data concerning industrial property that this latter shall require of it.
- Art. 2. (1) In the Dutch Indies, in Surinam, and in Curaçao, the right to the exclusive use of a mark intended to distinguish the products of the industry or trade of one person from those of others belongs to him that first in the Kingdom in Europe, in the Dutch Indies, in Surinam, or Curaçao, shall have made use of this mark for the purpose indicated; but this solely in whatever concerns the class of goods for which the mark shall have been used, and provided that the last use has not been made more than three years before.
- (2) Save proof to the contrary, and subject to the provisions of the following paragraph, he that first shall have satisfied the provisions of Art. 4 shall be considered as having been the first to make use of the mark deposited.
- (3) He that shall have deposited a mark in the Auxiliary Bureau of Industrial Property within the term of four months after he shall have effected the regular deposit, agreeable to Art. 6 of the Convention of Paris of March 20, 1883, for the protection of industrial property (Nederlandsch Staatsblad, 1884, No. 189; Indisch Staatsblad, 1888, No. 188; Governementsblad van Suriname, 1890, No. 8; and Publicatieblad van Curaçao, 1890, No. 3), in one of the countries that have ratified the said Convention, shall be considered as having made use of the mark from the commencement of this term in the colony in which the Auxiliary Bureau is located.
- (4) He that, within the six months following the opening of an international exposition, official or officially recognized, within the territory of one of the countries adherent to the said International Convention of Paris, shall have

<sup>\*</sup>For translation of the trade mark law see 3 P. & T. M. Rev., 1298, 1339, and Vol. 4, p. 1365.

deposited with the Auxiliary Bureau of Industrial Property a mark under which articles of his trade or of his industry have been exhibited at this exposition, in order to be registered according to Art. 4 for the same class of goods, shall be considered as having made use of this mark within the colony in which the Auxiliary Bureau is established, from the day on which it has figured in the exposition as a distinctive sign of his products of the same class. As proof of the day on which the mark has thus figured in the exposition, the Auxiliary Bureau of Industrial Property may require the production of a certified declaration from the administration of the exposition or from any qualified person or authority approved by it.

Art. 3. The registration of one mark in the name of several owners is authorized only if they all jointly have a share in the industry or commercial establishment whose products the mark is destined to distinguish.

The Auxiliary Bureau of Industrial Property may require, as proof of this fact, the deposit of a certified extract of the instrument establishing the joint right whereof there is question.

- Art. 4. (1) In order to obtain the registration of a mark, the party interested shall deposit with the Auxiliary Bureau of Industrial Property that is found within the colony in which it is desired to register his mark a cut (cliché), corresponding to the mark, having a length and a width of at least 1.5, and at most 10 centimetres, and a thickness of 2.4 centimetres, in addition to two signed copies of a distinct reproduction of his mark and an exact description agreeing with this latter. This description should mention, in addition, the class of goods for which the mark is intended, as well as the full name and the domicile of the depositor. If the description designates the color as a distinctive element of the mark, the depositor shall place at the disposition of the Auxiliary Bureau the number of reproductions in color of the mark that shall be determined by this latter.
  - (2) The deposit may also be made by a person authorized in writing.
- (3) The mark shall not contain words or representations contrary to good morals or by which the use of the mark might be harmful to public order. It shall not contain the arms or seal, even slightly modified, of a public law department.
- (4) On the deposit, there shall be payable for each mark a fee of ten florins which shall in no case be refunded.
- Art. 5. (1) Within the eight days that follow that of its filing, the mark, deposited according to the preceding article, shall be, subject to the provisions of Art. 9, registered by the Auxiliary Bureau of Industrial Property in the public register provided for this purpose, whose model agrees with that established, according to Art. 5 of the trade mark law, by the Minister charged with the execution of the said law.
- (2) The two facsimiles deposited of the reproduction and of the description shall be certified, with the addition of the date and the number under which the inscription in the register shall have been effected.
- (3) One of these facsimiles shall be returned to the depositor within the three days that follow.
- (4) In the case provided in the second paragraph of Art. 4 the power shall be attached to the other facsimile.
- Art. 6. (1) The Auxiliary Bureau of Industrial Property shall publish in the Dutch Indies in the next following number of the journal, the Javasche Courant, monthly; in Surinam and in Curaçao in the next following number of the

journal appearing monthly, wherein official notices are published, the descriptions, mentioned in Art. 4, of the marks registered since the last publication, each with the reproduction of the corresponding clické, by indicating the class of goods for which these marks are intended, as well as the full name and the domicile of the depositors.

- (2) These publications shall be made in the special supplements of the Courant or of the journal, which may be obtained separately. After this, the cliché shall be returned to the depositor on his request.
- Art. 7. (1) Residents of the Dutch Indies, of Surinam or of Curação, as well as non-residents that have there a serious commercial or industrial establishment, effectively serving in the exercise of industry or commerce, who desire to secure for themselves in other countries adherent to the Arrangement approved by the law of Dec. 12, 1892 (Nederlandsh Staatsblad, No. 270; Indisch Staatsblad, 1893, No. 99; Gouvernementsblad van Suriname, 1893, No. 8, and Publicatieblad van Curação, 1893, No. 2) and concluded at Madrid April 14, 1891, the protection of the mark deposited by them in conformity with Art. 4, for the same class of goods, shall forward to the Auxiliary Bureau of Industrial Property in the colony, in which they are domiciled or possess a commercial or industrial establishment, four additional facsimiles, of which one shall be signed, of a distinct reproduction of the mark, a description of the kind of goods for which the mark is intended, drawn up in French and signed by them, and a clické agreeing with the provisions of the preceding article. If the color of the mark constitutes a distinctive element of this last, the depositor shall make mention thereof in a detailed description of the mark, signed by him, which he shall include with the deposit; and he shall place at the disposal of the Auxiliary Bureau of Industrial Property the number of facsimiles in color that this latter shall have determined.
  - (2) The second paragraph of Art. 4 shall be applicable thereto.
- (3) On the deposit, there shall be payable, for one mark the sum of sixty florins, and for each of the following marks, filed at the same time as the first by the same owner or in his name, the sum of thirty florins. The sums thus paid shall in no case be refunded.
- (4) If the mark deposited by virtue of Art. 4 has not been registered in accordance with Art. 5, the Auxiliary Bureau of Industrial Property shall notify the depositor that the application for registration with the International Bureau at Berne cannot take place for the time being.
- (5) If the mark has been registered according to Art. 5, or as soon as it shall be, the Auxiliary Bureau of Industrial Property shall forward, including therewith the sum of sixty florins for the first mark and thirty florins for each of the following marks deposited at the same time as the first by the same owner or in his name, the three unsigned facsimiles of the reproduction mentioned in the foregoing first paragraph, with the description there provided of the class of goods for which the mark is intended, drawn up in French and signed by the depositor, and, in the case provided in the last phrase of the first paragraph of the present article, the number of impressions of the mark in color fixed by the Bureau at The Hague, to this latter Bureau, which shall proceed without delay with the application for registration at the International Bureau at Berne.
- (6) The Auxiliary Bureau shall keep the signed facsimile of the reproduction, which it shall certify as correct.
- (7) The Bureau of The Hague shall without delay notify the Auxiliary Bureau of all that the International Bureau has communicated to it on the sub-



ject of the mark, and the Auxiliary Bureau shall advise the depositor thereof in so far as it is deemed that these communications may interest him.

- (8) The Bureau of The Hague shall return, in addition, to the Auxiliary Bureau, the copy of the application for registration that shall have been returned to it by the International Bureau at Berne.
- Art. 8. (1) When the Bureau of The Hague shall have received from the International Bureau at Berne, in conformity with Art. 3 of the Arrangement of Madrid modified by the Additional Act signed at Brussels Dec. 14, 1900, and approved by the Law of June 7, 1902 (Nederlandsh Staatsblad, No. 85; Indisch Staatsblad, No. 377; Gouvernementsblad van Suriname, No. 22, and Publicatieblad van Curaçao, No. 37), a notification concerning the international registration of a deposited mark, in the tenor of Art. 7 of the present decree, at an Auxiliary Bureau, or of a foreign mark, it shall transmit without delay to the interested Auxiliary Bureau a certified copy of this notification, and this latter shall record the mark, subject to the provisions of Art. 9, and within eight days after the receipt of the notification, in the public register for this purpose, whose model is identical with that provided, according to Art. 8 of the trade mark law, by the Minister charged with the execution of the said law.
- (2) The copy of the notification received shall be certified, with the addition of the date and of the number under which the inscription in the register shall have been effected.
- (3) If the internationally registered mark has been deposited according to Art. 7 in the Auxiliary Bureau of Industrial Property, this latter shall as soon as possible give notice to the depositor concerning the international registration, and shall deliver to him a dated certificate concerning the registration mentioned in the first paragraph of the present article.
- (4) The supplement of the journal of the International Bureau at Berne in which are published the internationally registered marks may be obtained from the Auxiliary Bureau, to which the Bureau of The Hague shall remit, for this purpose, the requisite number of copies.
- (5) The placing of this journal at the disposition of the public shall be, each time, the subject of a communication in the *Courant*, or in the journals mentioned in Art. 6.
- Art. 9. (1) If the mark, deposited in accordance with Art. 4, or the foreign mark, mentioned in Art. 8, agrees absolutely or in its essential elements with that registered in the name of another, or deposited previously by another for the same class of goods, or if it is contrary to the provisions of the next to the last paragraph of Art. 4, the Auxiliary Bureau of Industrial Property may refuse its registration; it shall give notice of this refusal to the depositor in writing, with indication of the reasons, within the eight days that follow the deposit of the mark, or as soon as possible after having received the notification addressed, according to the terms of Art. 8, to the Bureau at The Hague, which will communicate the refusal to the International Bureau at Berne.
- (2) The depositor, with whom Art. 4 is concerned, or the one of the mark mentioned in Art. 8, may address—in the Dutch Indies to the Raad van Justitie at Batavia, in Surinam or in Curaçao to the Hof van Justitie—a petition signed by himself or by his attorney, to the end of having the registration ordered. This petition shall be presented by the depositor whereof Art. 4 treats within the three months that follow the hereinbefore mentioned notice, and, by the

depositor of the mark mentioned in Art. 8, within the six months that follow said notice.

- Art. 10. (1) If the mark, registered in accordance with Art. 5, or of the foreign mark, registered in accordance with Art. 8, agree entirely or in its essential details with a mark to which another person has the right, by virtue of Art. 3, for the same class of goods, or contains the name or commercial designation to which another has the right, this latter, who claims this right, may, without prejudice to other legal means that are at his disposal, address—in the Dutch Indies to the Raad van Justitie, in Surinam or in Curaçao to the Hof van Justitie—a petition signed by himself or by his attorney, to the end of having declared the nullity of the resignation; this petition shall be presented, in whatever concerns a mark registered in accordance with Art. 5, within the nine months that follow the publication prescribed by Art. 6, and in whatever concerns a foreign mark registered in accordance with Art. 8, within the nine months that follow the communication prescribed at the end of this article.
- (2) The owner, of whom mention is made in the first paragraph, after the expiration of the term that is there indicated, may also petition in the same manner the nullification of the registration, when his right shall result from a judicial decision.
- (3) During the term fixed by the first paragraph, the Public Minister may, if the mark is contrary to the provisions of the next to the last paragraph of Art. 4, petition the judicial colleges designated in the first paragraph that the registration be declared void.
- Art. 11. The clerk shall within three days give notice in writing to the Auxiliary Bureau of Industrial Property of every petition in accordance with Arts. 8 and 10, and of every demand made by the Public Minister in conformity with Art. 10.
- Art. 12. (1) The judicial colleges designated in the last paragraph of Art. 9 and in the first paragraph of Art. 10 shall decide in council chamber.
- (2) There shall be no decision concerning a petition made by virtue of Art. 9, until after the petitioner and the Director of the Bureau of Industrial Property, respectively, shall have been given opportunity to orally sustain before the judicial college the right to registration of the mark, and the reasons that militate in favor of the refusal of registration. The petition and the simple taking into consideration by which the judicial college has thereto responded in order to fix the day for hearing shall be made known to the Chief of the Auxiliary Bureau by the petitioner within the term of fourteen days after the order shall have been issued.
- (3) There shall be no decision on a petition or an application made by virtue of Art. 10 until after the regular hearing or citation of the depositor of the mark on the date fixed by the judicial college at the time of the simple taking into consideration of the petition or application; the clerk shall give advice in writing of this date to the Auxiliary Bureau of Industral Property; and if it is a matter of a mark registered in accordance with Art. 5, notice shall be given to the applicant by notification, emanating from the petitioner or from the Public Minister, of the petition or application and of the taking into consideration that has followed the same, and this within the term of fourteen days counting from the signing of this latter.
- (4) If it is a matter of a mark registered in accordance with Art. 8, the Auxiliary Bureau of Industrial Property shall give notice of the petition or appli-

cation to the Bureau of The Hague; it shall communicate as soon as possible to this latter the date that the judicial college shall have fixed for the hearing, and this at least three months in advance.

- (5) The Bureau of The Hague shall immediately communicate the whole to the International Bureau at Berne.
- (6) At the hearing, the petitioner, and, in the case provided in the second paragraph of Art. 10, the Public Minister, may orally expound the reasons serving as basis for the petition or application.
- (7) Before the adjournment of the hearing prescribed by the present article, the judge shall fix the date on which he will pronounce judgment.
  - Art. 13. (1) Appeal against the decision is not admissible.
- (2) In the Dutch Indies (not in Surinam or in Curação), an appeal in cassation may be made within the term of one month counting from the date of the decision of the Court. If it is a matter of a mark deposited agreeable to Art. 4, or registered in accordance with Art. 5, the petition relative thereto shall be made known to the adverse interested party.
- (3) If the appeal is for the purpose of having the registration of a mark ordered, the Auxiliary Bureau of Industrial Property in the Dutch Indies shall be considered as the adverse interested party.
- (4) The clerk of the High Court of the Dutch Indies shall give notice in writing within three days to the Auxiliary Bureau of Industrial Property concerning any other appeal in cassation not emanating from this Bureau.
- (5) If the appeal in cassation concerns one of the marks of which mention is made in Art. 8, the Auxiliary Bureau shall communicate it to the Bureau of The Hague, which shall give notice thereof to the International Bureau at Berne.
- Art. 14. (1) He that has no domicile in the colony shall make election of an address for service within the colony at the time of the deposit mentioned in Arts. 4 or 7, and at the time of the sending of one of the petitions presented in accordance with Arts. 9, 10 or 13.
  - (2) All proceedings shall be directed to the address chosen.
- Art. 15. (1) The clerk shall give notice in writing to the Auxiliary Bureau of Industrial Property, within three days, of the decision rendered by the Raad van Justitie at Batavia or by the Hof van Justitie in Surinam or in Curação.
- (2) Like notice shall be given in the Dutch Indies by the clerk of the High Court in whatever concerns the issue of the appeal in cassation.
- (3) In accordance with the decision of the Tribunal, having acquired the force of a res judicata, or agreeable to the decision of the High Court in the Dutch Indies, when this latter shall have given final judgment, the Auxiliary Bureau shall register the mark or take note of the avoidance of the registration in the reserve column of the public register wherein the mark shall have been recorded.
- (4) The registration shall then be considered as having taken place on the date of the deposit or on that of the receipt of the notification mentioned in Art. 8.
- (5) The Auxiliary Bureau shall communicate to the Bureau of The Hague the notices prescribed by the present article, if they concern one of the marks mentioned in Art. 8, as soon as the decision shall have the force of a res judicata.
- (6) The said Bureau of The Hague shall notify as promptly as possible the International Bureau at Berne.
  - Art. 16. (1) The Auxiliary Bureau of Industrial Property shall publish:
    - 1. The refusal of registration of a mark, mentioned in Art. 8, as soon as

the term established in the second paragraph of Art. 9 shall be expired without the petition provided in this article having been filed, or as soon as a decision rejecting this petition shall have the force of a res judicata;

- 2. The annulling of the registration of a mark whose description shall already have been published in accordance with Art. 6, or whose international registration shall already have been announced in the supplement of the journal of the International Bureau at Berne;
- 3. The forfeiture of a registration for any of the reasons indicated in Art. 18, Secs. 1 or 3;
- 4. The assignment, recorded in conformity with Art. 20, of a mark registered in accordance with Art. 5.
- 2. The publications prescribed in the present article shall be made in the special supplements mentioned in the last paragraph of Art. 6.
- Art. 17. (1) The public registers mentioned in Arts. 5 and 8 may be consulted by any person without charge in the offices of the Auxiliary Bureau of Industrial Property.
- (2) Any person may obtain, at his own expense, an extract or a copy, whereof the cost shall be calculated, in the Dutch Indies, on the basis of Art. 7 of the charges for judicial expenses and emoluments in civil matters for the European tribunals, and in Surinam and in Curação on the basis of Art. 20 of the charges for judicial expenses and emoluments in civil matters.
- (3) On payment of the sum of 50 cents, payable preferably by means of a stamp delivered by the Auxiliary Bureau of Industrial Property, in accordance with the model prescribed for the Bureau of The Hague, any person may receive a written reference concerning the contents of the public registers of the Auxiliary Bureau mentioned in Arts. 5 and 8.
  - Art. 18. (1) A registration shall cease to be of effect:
  - I. By the cancellation made on application of any person in whose name the registration has been made, or of any person in whose name the assignment has been recorded in accordance with Art. 20;
  - 2. By the expiration of twenty years counting from the day on which the registration took place, in accordance with Arts. 5 or 8, if this registration has not been renewed before the expiration of this term, or if the renewal has not been repeated within like term;
    - 3. By the forfeiture or refusal of registration in the country of origin;
  - 4. On Dec. 31, 1913, for all marks registered that contain, even slightly altered, the name or insignia of the "Red Cross," called also the "Geneva Cross."
  - (2) The annulment of the registration for any of the reasons mentioned under Secs. I or 3 shall be entered, with indication of the reasons, in the column for this purpose of the public register wherein the mark was recorded.
  - Art. 19. (1) In order to secure the renewal of a mark, registered in conformity with Art. 5, the owner shall fulfill, before the expiration of the term indicated under section 2 of the preceding article, the same formalities as those indicated in Art. 4 for the first deposit.
- (2) The copies filed, with which the first paragraph of Art. 4 is concerned, shall be certified, along with the date of renewal.
- (3) The Auxiliary Bureau of Industrial Property shall proceed to the renewal of the registration by inserting the date in the column for this purpose of the public register wherein the mark has been recorded.

- (4) After the renewal of the registration of a mark registered in conformity with Art. 5, there shall be delivered to the owner, within three days, one of the copies mentioned in the second paragraph of the present article.
- (5) The fourth paragraph of Art. 5 and Art. 6 shall in addition be applicable to this mark.
- (6) If it is a matter of a mark deposited in view of the renewal of registration and of the fulfillment of the formalities indicated in Art. 7, there will be occasion to apply the third and fourth paragraphs of the said article.
- (7) The renewal of a mark registered in the tenor of Art. 8 cannot take place until after the Bureau of The Hague shall have transmitted the copy, mentioned in this article, of the publication provided by Art. 3 of the Arrangement of Madrid. This copy of the publication shall be legalized, with the addition of the date on which the renewal has been recorded.
- (8) In the case of renewal of registration in the Dutch Indies, in Surinam, or in Curação, of an international mark registered anew that has been deposited in conformity with Art. 7 with the Auxiliary Bureau of Industrial Property of the colony interested, there shall be delivered to the owner, as soon as possible, a certificate with date.
- (9) In cases of renewal, the second and third paragraphs of Art. 10 and the other articles of the present ordinance shall be held applicable.
- (10) The Auxiliary Bureau may refuse to register the renewal when the mark is contrary to the provisions of the next to the last paragraph of Art. 4, and, in this case, it shall proceed in the manner prescribed in the first paragraph of Art. 9; after this, the second paragraph of Art. 9, Art. 11, and the other articles of the present ordinance shall be held applicable.
- Art. 20. (1) The assignment to a third party of a mark registered in accordance with Art. 5 shall be registered only if the industrial or commercial establishment, whose products the mark is intended to distinguish, has passed at the same time to the same person.
- (2) The proof of what precedes shall be made by the deposit in the Auxiliary Bureau of Industrial Property of a certified extract of the document relative thereto.
- (3) The assignment shall be registered, in whatever concerns marks registered in accordance with Art. 5, on the written application of the parties, or also on the application of the purchaser alone, if the assignment of the mark appears sufficiently from the extract mentioned in the preceding paragraph; and, in whatever concerns marks registered in accordance with Art. 8, after the receipt of the notice from the Bureau of The Hague relative to the registration that has been there effected, it shall be endorsed on the margin of the registration.
- (4) For the registration of the assignment of a mark registered in conformity with Art. 5, there shall be due a fee of five florins, payable at the moment on which this registration shall be applied for.
- Art. 21. (1) Notice shall be immediately given to the Bureau of The Hague, which shall communicate the matter to the International Bureau at Berne, of the forfeiture, or of the application for the registration of the assignment of an internationally registered mark that shall have been deposited in the Bureau of Industrial Property in conformity with Art. 7.
- (2) The assignment of a like mark shall not be registered if the assignment is effected in favor of a person not of Dutch nationality, not being domiciled in

one of the States adherent to the above mentioned Arrangement of Madrid, and not possessing in the territory of one of these States a serious industrial or commercial establishment serving effectively in the carrying on of industry or commerce.

- Art. 22. (1) The marks that, on the entry into force of the present ordinance, shall already be registered by virtue of the provisions antedating this entry into force, shall enjoy the same protection as if they had been registered in accordance with the present ordinance. The twenty years mentioned in Art. 18, Sec. 3, shall commence to run, for these marks by counting from the day on which the registration took place in virtue of the prior provisions.
- (2) For the application of Art. 7 of the present ordinance these marks shall be considered as having been deposited in accordance with Art. 4.
- Art. 23. (1) He that knowingly imports into the colony goods that falsely bear upon themselves or upon their containers a name (firm) or a mark belonging to a third party, or a mark corresponding in its essential details to that of a third party, or that bear as indications of origin the name of a determined locality, with the addition of a fictitious name or of an imaginary firm, even slightly modified, of a third party, without these goods being clearly intended to be re-exported, and whoever sells them, offers them for sale, consigns them, distributes them, or holds them in store to be sold or distributed, is liable, in the Dutch Indies, according to the nationality of the delinquent, to imprisonment at hard labor, but without irons, and in Surinam and in Curação to imprisonment for from eight days to three months, with or without a fine of from 25 to 600 florins.
- (2) If, at the time that the crime is committed, there have not yet expired five years since a prior conviction, pronounced against the same criminal for a like crime, has become final, the maximum of the penalties provided for hereinbefore shall be doubled.
- Art. 24. The present ordinance shall not be applicable to marks established by public authority.
- Art. 25. On the entry into force of the present ordinance there shall cease to be of effect the Royal ordinances of Nov. 9, 1893, Nos. 24, 25 and 26 (Nederlandsch Staatsblad, Nos. 159, 160 and 161; Indisch Staatsblad, No. 305; Gouvermementsblad van Suriname, No. 31 and Publicatieblad van Curaçao, No. 20; see La Propriété Industrielle, 1894, p. 47) insofar as they have been modified in the last place by the ordinances of March 2, 1908, No. 64; (Nederlandsch Staatsblad, No. 79; Indisch Staatsblad, No. 365) and Aug. 18, 1910, Nos. 31 and 32; (Nederlandsch Staatsblad, Nos. 258 and 259; Gouvernementsblad van Suriname, No. 74 and Publicatieblad van Curaçao, No. 52), the same as Arts. 10, kept in force, of the Royal ordinances of April 6, 1885, No. 13 (Indisch Staatsblad, No. 109), Feb. 3, 1890, No. 26 (Gouvernementsblad van Suriname, No. 7) and Feb. 3, 1890, No. 27 (Publicatieblad van Curaçao, No. 2).
- Art. 26. The present ordinance may be cited under the title of "Regulation for Industrial Property in the Colonies, 1912."
- Art. 27. The present ordinance shall become effective on the date that shall be fixed, in the Dutch Indies, by the Governor General, and in Surinam and in Curação by the Governor.

Our Ministers of the Colonies, of Agriculture, Industry and Commerce, are charged, each for whatever concerns him, with the execution of the present ordi-

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nance, which shall be published in the Staatsblad, whereof a copy shall be sent to the Council of State.

Given at Loo, August 29, 1912.

(Signed) WILHELMINE.

The Minister of the Colonies,
DE WAAL MALEFIJT
The Minister of Agriculture, Industry and Commerce,
A. S. TALMA
Promulgated, Sept. 17, 1912.
The Minister of Justice,
E. R. H. REGOUT.
(From La Propriété Industrielle, Jan., 1914, pp. 36-40.)

### United States.

### Industrial Property. Statistics and Report, 1915.

The Annual Report of the Commissioner of Patents for the year ending Dec. 31, 1915, appears in full in 223 Official Gazette, 993-1,007. From it we take the following interesting statistics—interesting in showing the effects of the second year of the European war. For those of the first year (and comparison with 1913) our readers are referred to 13 P. & T. M. Rev., 187.

The number of applications for patents during the year 1915, was 67,138 (1914, 67,774); designs, 2,734 (1914, 2,454); reissues of patents, 197 (1914, 176); trade marks, 8,432 (1914, 8851); labels, 982 (1914, 988); prints, 486 (1914, 434). In general this shows a falling off for the year 1915 as compared with 1914. In reality, however, the decrease is so slight that it is actually a gain, as the war affected only five months of the year 1914.

The number of patents, including designs (1,545), issued, was 43,207 (1914, 41,660); patents reissued, 182 (1914, 190); trade marks registered, 6,262 (1914, 6,817); labels, 803 (1914, 719); prints, 371 (1914, 338).

As to the countries of origin, the United States led with 40,321 patents issued (1914, 37,007), not including 182 reissues, one patent without residence, and 96 patents withdrawn. Other countries follow in this order: Germany, 1,209 (1914, 1,475); England, 1,069 (1914, 1,033); Canada, 706 (1914, 667); France, 340 (1914, 379); Austria-Hungary, 136 (1914, 152); Switzerland, 129 (1914, 122); Scotland, 81 (1914, 93); Sweden, 93 (1914, 82); Italy, 83 (1914, 70); Belgium, 46 (1914, 56); Victoria, 53 (1914, 44); New South Wales, 38 (1914, 40; Norway, 38 (1914, 38); Russia, 22 (1914, 37); Denmark, 36 (1914, 32); Mexico, 17 (1914, 26); Ireland, 20 (1914, 25); The Netherlands, 30 (1914, 23); Cuba, 18 (1914, 20); Argentina, 19 (1914, 13); Japan, 10 (1914, 13); Transvaal, 12 (1914, 13); Wales, 14; West Australia, 14; and other countries less than ten each.

During the year 20,404 patents expired, and 11,331 applications were forfeited for non-payment of final fees.

The grand total of receipts of the Patent Office was \$2,290,773.47 (1914, \$2,251,892.82); expenditures, \$2,053,442.15 (1914, 2,000.770.12).

The Report on the whole is a very instructive document, giving a clear insight into the present state of business in the Patent Office, with sundry recommendations for facilitating the work therein, several being the subject of

proposed legislation before the present Congress and noticed elsewhere in this issue of the Review.

Under the caption "Condition of the work in the Office," the Report says: "If the business of the Office be considered with reference to the average time of pendency of applications, the showing as to promptness is satisfactory. The average time that applications upon which patents are granted are in the Office is only about twenty-two months, and ninety-seven per cent of all applications are disposed of within five years; but, since important patents are frequently unduly delayed, the proper way to handle the business is to enforce the prosecution of all applications as rapidly as is reasonably possible. One of the Law Examiners is assigned to this particular duty. That the work is being done, and with fair success, is shown by the reductions indicated in the foregoing comparative table of distribution of applications by the years in which they were filed as of January 1, 1916 and January 1, 1915, respectively. Every year shows a decrease. The total decrease in the number of applications pending in the examining divisions or on appeal, omitting allowed and forfeited applications. is 7,214 applications. After making allowance for the slight falling off of applications this year there remains a net gain of 6,578 applications. Thus it appears that the Office completed its examination of almost ten percent more applications than it received during the year. This does not indicate that the corps is unnecessarily large. It is in pursuance of a definite policy to require prompt prosecution by applicants and their This has brought up for final disposition many applications where heretofore dilatory proceedings have been resorted to.

The method by which the Office can force the prosecution of applications is to hold the applicant strictly to the rule requiring complete response to each Office action. If the response filed within a period of one year from the date of the Office action is not complete the Office may hold the application abandoned for lack of proper prosecution.

Now that the amendment work is substantially up to date risk of having an application held abandoned for lack of proper prosecution can be entirely avoided by filing amendments six weeks or two months in advance of the expiration of the year. If the proposed amendment is not a complete response, the applicant will be notified, so that the response may be completed within the year. It is not the intention to suggest that the filing of amendments be delayed, but to urge that they be not delayed in any case to so near the end of the year that correction of defects cannot be made within the statutory period of one year . . . "Regarding "Interferences," the Commissioner says:

"Since the latter part of 1914 in cases where a difference of one year exists between the filing dates of pending applications found to disclose and claim common patentable subject-matter inquiry has been made of the junior applicant as to his claimed dates of conception, disclosure, and reduction to practice of the common subject-matter. When the response has revealed a date of conception subsequent to the filing date of the senior application, the junior party has been notified that no interference would be declared, but that the senior application would be allowed and when patented be cited as a reference against the junior party's application.

This procedure has resulted in a still further and large reduction in the number of interferences declared; but application of it at present is suspended because of a mandamus respecting which an appeal is now pending before the Court of Appeals of the District of Columbia. . . . "Under "Requirement of Division," the following is also of interest:

"The submission of final requirements for division to a Law Examiner has shown the existence of wide variations of practice among the Primary Examiners. Such divergence has been found particularly as to claims to a process, a product, and a machine, to an improved element and its combination with a machine, broadly stated, and to improvements in parts of an old machine and sub-combinations and elements thereof theoretically capable of use in other machines and other arts.

Care has been taken to avoid requirements of division which might result in the issuance to an applicant of two patents of doubtful validity over each other, as where a process and product or a process and machine are so intimately related as to make joinder advisable, or where the process can only be carried out by the machine, or the product only made by the process, or where they are stated in the same or like terms.

The necessity of classification, so that the statutory examination can be made, has been borne in mind, and where process, product, or machine are of broader application and utility than with each other and the development of trade and invention have pointed to severance and the fields of search have become divergent divisions have been approved. Division is not believed proper where the result might be issuance of two patents resting on the same patentable novelty. Division in such cases is not the appropriate action. Division has been approved as to elements, parts, and subcombinations of a machine where they are clearly separable in structure and function from the other parts of the machine, are capable of use in other relations, and when the course and development of trade and invention has pointed them out as severable. In such cases Office classification indicates and follows a natural development. Where such a development has not taken place, it is not thought necessary for the Office to anticipate the development. A mere theoretical independence of intellectual conception or of possible use is not believed sufficient in itself to warrant division.

Of the requirements formally submitted to the Law Examiner since September 1, 1915, for approval for final action, forty-two per cent have been disapproved."

### Industrial Property. Proposed Legislation (64th Congress), 1915-16.

During the present session of Congress numerous bills of particular interest to industrial property have been under consideration. Among these are the following:

H. R. 420 (Mott)—Copyright—"To amend (Sec. 5 of) the copyright law passed March fourth, nineteen hundred and nine," which provides for eleven classes of copyright applications by adding a twelfth class: Labels, trade marks, firm names, and special designs, pictures, prints, wrappers, cartons, containers,

and advertisements which are specifically created for individual trades, manufactures, or business, . . . ":

- H. R. 3053 (Oldfield)—Copyright—"To amend section twenty-three of the Act entitled 'An Act to amend and consolidate the Acts respecting copyright,' approved March fourth, nineteen hundred and nine," provides that "Upon the expiration of the copyright of a book, or the renewal thereof should the same be renewed, there shall exist no superior rights of any nature whatsoever in the publisher or former proprietor thereof to the matter which has been the subject of copyright or to the name or title thereof, but both the matter which has been the subject of copyright and its name or title shall fall into the public domain and thereafter be forever free to the unrestricted use of the public";
- H. R. 3630 (Randall) and S. 2740 (Penrose)—Copyright—"To amend sections five, nine, eleven, twelve, and twenty-five of an Act entitled 'An Act to Amend and consolidate the Acts respecting copyrights,' approved March fourth, nineteen hundred and nine, and as amended August twenty-fourth, nineteen hundred and twelve"; it provides for three additional classes of works, namely, "(1) Motion-picture photoplays; (m) Motion pictures other than photoplays; and (n) Scenarios, and otherwise amends with reference to the added subject-matter;
- H. R. 7624 (Barchfeld) and S. 3342 (Hardwick) Copyright—Amending Sec. 62 of the Copyright Act of March 4, 1909, particularly defining the "date of publication";
- S. 4890 (Lee)—Copyright—Amending the provision regarding newspapers in clause (b) of Sec. 25 of the Copyright Act of March 4, 1909, as amended by the Copyright Act of Aug. 24, 1912, and amending Sec. 40 of this latter Act; it provides that the penalty for the illegal reproduction of a copyrighted photograph, shall cover a print or pictorial reproduction;
- H. R. 8356 (Morrison)—Copyright—provides for the corrections and clarifying of Secs. 28 and 30 of the Copyright Act of March 4, 1909, to better carry into effect the intention of this law.
- H. R. 3054 (Oldfield)—Patents—"To revise and amend the laws relating to patents," to-wit, Secs. 4884 and 4899 of the Revised Statutes, the former recites that the term of a patent shall be seventeen years, and provides that "every patent granted for an invention shall be so limited as to expire nineteen years from the date of the filing in this country of the application upon which the patent was granted, exclusive of the time actually consumed by the Patent Office or the courts in considering the application and, where the application has been involved in interference, of the actual time that it has been so involved; and in no case shall the patent be in force more than seventeen years." Sec. 4899 shall read "Every person who purchases of the inventor or discoverer or, with his knowledge and consent, constructs any newly invented or discovered machine or other patentable article prior to the application by the inventor or discoverer for a patent, or who sells or uses one so constructed, shall have the right to use, and vend to others to be used, the specific thing so made or purchased, without liability therefor. No person selling or otherwise disposing of any article manufactured under a patent shall have any greater right to prescribe, either by contract or otherwise, conditions limiting its subsequent disposition or use than if the article were not manufactured under a patent. No purchaser, lessee, or licensee of a patented article shall be liable to an action for infringement of the patent because of any breach of the contract of sale, lease, or

license, or of any provision thereof. No person who obtains a license to use any patented art or process, or to make, use, and sell any patented article shall be liable to an action for infringement of the patent because of a breach of such license or of any provision thereof." The remainder of the bill is concerned with definitions and provisions concerning legal remedies. This bill is a revival of H. R. 15989 (Oldfield) and H. R. 17140 (Metz)—See 12 P. & T. M. Rev., 244, 281.

H. R. 3082 (Edmonds)—Patents—"To amend the laws relating to patents," provides for the granting of a compulsory licenses;

H. R. 4689 and S. 685 (Morrison)—Patent Office—"Prohibiting the use of the name of any Member of either House of Congress or of any other officer of the Government by any person, firm, or corporation practicing before the Patent Office in advertising his business," the title substantially reciting the provisions of the Bill, which is a revival of H. R. 21292 (Oldfield)—See 13 P. & T. M. Rev., 183;

H. R. 9712 (Thompson)—Patents—"Providing for the issuing of patents" for "any new and useful art, method, or system of transacting business," on payment of "the sum of \$100," for a term of twenty-five years;

H. R. 12716 (Oglesby)—Patents—"Amending Secs. 4898, 4906, 4921, 4934, and 4935 of the Revised Statutes." The amendment to Sec. 4898 provides that filing for record shall constitute constructive notice from date of filing. The amendment to Sec. 4906 provides for the issuance of subpoenas duces tecum in contested cases in the Patent Office. The proposed amendment of Sec. 4921 provides that the Clerks of United States courts shall give notice to the Commissioner of Patents of actions brought in which patents are involved, and the Commissioner shall incorporate such notice in the file wrapper. The amendment to Sec. 4934 is proposed to provide a more adequate charge for the recording of lengthy documents. The amendment of Sec. 4935 is designed to bring about the discontinuance of the practice of paying patent fees otherwise than directly to the Commissioner of Patents;

H. R. 13720 (Oglesby)—Patents—"To amend Sec. 4894 of the Revised Statutes relating to patent applications," provides that to the present provisions of Sec. 4894 there shall be added the following: "Provided, however, that no application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States":

H. R. 12196 (Morrison) and S. 4477 (Pomerene)—Patents, Trade Marks, Labels—"To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States citizens," providing that applicants prevented by war conditions shall be given a respite of nine months for filing applications and paying fees if said applicant is a subject or citizen of a country substantially extending like privileges to citizens of the United States, and provided that the original home application may have been filed within the time there provided by law. Such respite is to be of no effect as to subjects or citizens of any country that may become at war with the United States. In the language of the Bill as presented, such provision is to have effect as from Aug. 1, 1914;

H. R. 6458 (Morrison-by resquest)—Designs-"Providing for the registra-

tion of designs," divided into thirteen classes, for periods of three, ten and twenty years, with corresponding fees of \$1.00, \$10.00, and \$30.00, is substantially the same as H. R. 18223 (Oldfield), the measure proposed at the instance of the National Registration League (see 13 P. & T. M. Rev., 56);

- H. R. 13618 (Russell)—Designs—"To amend Sec. 4931 of the Revised Statutes of the United States," providing that patents for designs be granted for the term of three and one-half, seven, or fourteen years, with election by the applicant to extend from the shorter to the longer terms on payment of the corresponding fee;
- H. R. 417 (Mott)—Trade Marks, Labels, and Similar Property—"To protect owners of trade marks, labels, and similar property," provides "that it shall not be lawful . . . to knowingly make . . . or cause to be made . . . or to purchase . . . to utter, issue . . . any business card, trade mark, label, firm name, design, picture, wrapper, paper, advertisement, or any device whatsoever, or the plates . . . except only under authority of a written and signed order . . . executed by the individual . . . legally owning . . said vard, trade mark . . of who has publicly used the same for a
- . said card, trade mark . . of who has publicly used the same for period of time not less than twelve months." Penalties are provided;
- H. R. 380 (Butler) and S. 666 (Kern)—Trade Marks—"Revising and amending the statutes relative to trade marks" (Sec. 5 of the Act of Feb. 20, 1905, amended by the Act of March 2, 1907, amended by the Act of Feb. 18, 1911), by inserting in paragraph (b) at the end of the first clause thereof, after the word "emblem," the following: "Or the name of any church, religious denomination or society, or the name by which any church, religious denomination or society is commonly known or called"; and
- S. 1072 (Myers)—Labels—"Providing for the labeling and tagging of all fabrics and articles made therefrom, intended for sale, which enter into interstate commerce, and providing penalties for the misbranding."

### United States Practice.

#### Patents.

225 O. G., 739.

Court of Appeals of the District of Columbia.

IN RE POPE.

Decided February 7, 1916.

PATENTABILITY-DELAY IN PROSECUTION-RESOLVING DOUBTS.

Though a patent may not be withheld because of delay authorized by law, an applicant who has kept his case pending for years, knowing that the device covered thereby has gone into public use, is not in a position to demand more than is strictly due him, and the Commissioner is fully justified in reversing the ordinary rule by resolving doubts against him.

Mr. Melville Church and Mr. Alex. S. Stewart for the appellant.

Mr. William R. Ballard for the Commissioner of Patents.

ROBB. I.:

This appeal is from a decision of the Commissioner of Patents (222 O. G., 1055) disallowing six claims, of which the following are sufficiently representative:

1. An internal combustion engine, a generator of continuously maintained

periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, and means for isochronizing the instant of attainment of a selected electromotive force and a predetermined piston position of the engine.

- 3. An internal combustion engine, a generator of continuously maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, means for isochronizing the instant of attainment of maximum electro-motive force and a predetermined piston position of the engine, and means for augmenting said electro-motive force.
- 5. An internal combustion engine, a generator of continuously maintained periodic alternating current, a fixed igniting device for the charge in said engine in circuit with said generator, means for operating said generator at a speed bearing a constant ratio to the speed of said engine, and means for changing the relation of the wave peak of said current with respect to a predetermined piston position.

The tribunals of the Patent Office have very carefully and very satisfactorily stated the reasons for the disallowance of these claims, and we do not deem it necessary to restate them. Before the Commissioner, as here, the rule of "reasonable doubt" was invoked in behalf of the applicant. The Commissioner said:

It is quite a common practice of the Office to resolve any doubt in favor of an applicant for patent, but there is no rule of law compelling this, and though doubtless the practice works well in many cases, a universal application of it is of questionable wisdom.

After stating that the present application was filed May 10, 1899, that during the first fourteen years its prosecution was prolonged by the applicant to the fullest extent permissible under the statute, and that the device has gone into very wide use, the Commissioner concluded that it would be unreasonable to resolve in favor of the applicant any doubt that might exist—on the question whether the production of the combination claimed involved invention at the time of the filing of the application.

While it does not appear that the Commissioner was of the opinion that a doubt did exist, the applicant challenges this declaration of policy.

Though it is true that a patent may not be withheld because of delay authorized by the statute, we agree with the Commissioner that an applicant who has prolonged his application for a period of years, knowing that the device covered thereby has gone into public use, is not in a position to demand more than is strictly due him. In such a situation, the Commissioner would be fully justified in reversing the ordinary rule by resolving doubts against the applicant. The statute allowing the applicant a certain time within which to respond to the action of the Patent Office was not designed to permit him unduly to prolong his application. It is inconceivable that so great a delay as attended the present application could have resulted other than from design.

The decision is affirmed.

Affirmed.

### Trade Marks.

Supreme Court of the United States.

No. 23. HANOVER STAR MILLING COMPANY V. METCALF.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

No. 30. THE ALLEN & WHEELER COMPANY V. HANOVER STAR MILLING COMPANY.

On appeal from and writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Decided March 6, 1916.

### SYLLABUS.

No. 23. Unfair Competition; Similarity of Marks.

Where it appeared that the plaintiff had through a long period of years established a valuable trade in flour in the Southeastern States particularly in Alabama, in connection with the use of an alleged trade mark "Tea Rose," so that its mill in Illinois became known as the "Tea Rose mill," and the defendant though also a user of the mark "Tea Rose" for a considerable period, had but recently invaded the territory in question and by unfair means had attempted to cut into the trade of the plaintiff by selling flour under this mark in Alabama, Held that the plaintiff is entitled to an injunction against the defendant irrespective of its claim to affirmative trade mark rights in that territory and notwithstanding the fact that The Allen & Wheeler Company, not involved in this suit, had used the same mark prior to either plaintiff or defendant in other territory.

No. 30. TRADE MARKS; EXTENT OF MARKET; PRIORITY OF ADOPTION.

Where two parties independently are employing the same mark upon goods of the same class, but in separate markets wholly remote from one another, the question of priority of adoption of the mark is legally insignificant unless at least it appear that the second to adopt the mark has done so with some design initial to the interests of the first user.

We regret that through lack of space in the Review it is impossible to give our readers the complete combined decision in the two foregoing cases. It decides a novel question, it being substantially held that two conflicting trade marks, used concurrently, but in different parts of the country—so as to not conflict with each other—may each be valid. None of the companies had registered the mark, either nationally or locally, nor were there in any of the States in question any peculiar local rules or decisions pertinent to the matters involved. In view of this anomalous situation, the Court based its decision on the principles of common law. The text in full appears in the Official Gazette of March 28, 1916, pp. 1407-1414.

### Patents.

225 O. G., 1106

Court of Appeals of the District of Columbia.

IN RE BASTIAN AND SALISBURY.

Decided February 7, 1916.

PATENTABILITY—BAR BY APPLICANT'S FOREIGN APPLICATION—Section 4887, Revised Statutes.

In determining the question of a bar to the grant of a patent by reason

of a foreign application (sec. 4887, R. S.) the year is to be computed from the date of filing of a foreign provisional specification which ripens into a patent disclosing the invention (citing in re Swinburne, 19 App. D C., 565).

2. Appellate Jurisdiction-Interlocutory Questions.

There is no appeal to the court of appeals from a refusal by the Commissioner to remand a case to the Primary Examiner with instructions to declare an interference, (citing Westinghouse v. Duncan, 2 App. D. C., 131, and others).

Mr. C. A. Terry for the appellant.

Mr. William R. Ballard for the Commissioner of Patents.

### VAN ORSDEL, J.:

This appeal is from a decision of the Commissioner of Patents, rejecting as unpatentable certain claims for electric lamps of the character known as vapor-lamps or vapor are-lamps.

The rejection was based upon a British patent to appellants of 1903, which concededly contained the subject-matter of the appealed claims. A provisional application for the British patent was filed more than one year prior to the date of filing the present application, which, it was held, renders the British patent a bar to the granting of a patent on the appealed claims. (Sec. 4887, R. S.)

But it is argued that the completed specification of the British patent was filed less than a year before the present application, and that the provisional application did not disclose the subject-matter of the appealed claims. We have held, however, that the bar of the statute begins to run from the date of the filing of a foreign provisional specification which ripens into a patent disclosing the subject-matter of the claim upon which a domestic patent is sought. (In re Swinburne, 19 App D. C., 565.)

It is also insisted that the appealed claims are closely related to claims which have been allowed in a patent to one Kuch whose application was junior to that of appellants. When the Commissioner rejected appellants' claims as unpatentable, appellants requested a reference of the case back to the Examiner with instructions to declare an interference with Kuch. From the refusal of the Commissioner to grant this request error is here assigned. To recognize this as a proper ground of appeal and sustain the contention of appellants would be equivalent to compelling the declaration of an interference in the Patent Office. This we have held not to be within our appellate jurisdiction. In the very early case of Westinghouse v. Duncan (2 App. D. C., 131) this court, through Chief Justice Alvey, held that from —

the mere refusal of the Commissioner to direct an investigation and determination of the Examiners as to an alleged interference of an application for a patent with any pending application or with any unexpired patent, is but a preliminary opinion, as to the propriety of such examination, formed in the exercise of a sound discretion; and as the foundation for the exercise of such discretion, the Commissioner is at liberty to obtain extrinsic information as to the interfering claims. (Potter v. Dixon, 5 Blatchf., 160.) From this preliminary opinion of the Commissioner, no appeal lies to this court.

This rule as to interlocutory orders and rulings on mere matters of procedure has been consistently adhered to. (Allen v. Lowry, 26 App. D. C., 8; Union Distilling Co. v. Schneider, 29 App. A. D., 1; in re Fullagar, 32 App. D. C., 222;

Cosper v. Gold, 34 App. D. C., 194; Universal Motor Truck Co. v. Universal Motor Co., 41 App. D. C., 261.)

The decision of the Commissioner of Patents is affirmed, and the clerk is directed to certify these proceedings as by law required.

Affirmed.

#### Trade Marks.

225 O. G., 1441.

Supreme Court of the United States.

HAMILTON-BROWN SHOE COMPANY V. THE WOLF BROTHERS & COMPANY.

Decided February 21, 1916.

I. TRADE MARK-DESCRIPTIVE AND GEOGRAPHICAL TERMS.

The words "The American Girl" Held to be a good trade mark and neither geographical nor descriptive in character as applied to shoes.

2. SAME—INFRINGMENT—AMOUNT OF RECOVERY.

Where there is no means of ascertaining what proportion of the infringer's profit is due to the trademark and what to the intrinsic value of the commodity, the owner of the mark should be awarded the whole profit.

3. CERTIORARI-REFUSAL TO GRANT-EFFECT.

Refusal to grant an application for a writ of certiorari is not equivalent to an affirmance of the decree sought to be reviewed.

4. SAME—JURISDICTION.

Having taken up a case on a writ of certiorari, the Court is called upon to notice and rectify any error that may have occurred in the proceedings.

ON WRIT of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Mr. H. S. Priest, Mr. J. W. Bailey and Mr. Luke E. Hart for the petitioner. Mr. Lawrence Maxwell, Mr. Percy Werner, and Mr. Simeon M. Johnson for the respondent.

Mr. Justice PITNEY delivered the opinion of the Court.

Respondent, an Ohio corporation engaged in the manufacture of shoes, filed its bill of complaint on January 29, 1906, in the Circuit Court of the United States for the Eastern District of Missouri, Eastern Division, against petitioner, a Missouri corporation engaged in the same business, seeking an injunction to restrain infringement of an alleged trade mark for shoes consisting of the words, "The American Girl," by the use of the words "American Lady" as a colorable imitation, and also unfair competition in trade, carried on by means that included the use of the latter words; and praying an accounting of damages and profits. On final hearing the circuit court dismissed the bill. Upon appeal, the circuit court of appeals (165 Fed., 413) held that "The American Girl" was a geographical name, and, as applied to women's shoes, was descriptive merely of shoes manufactured in America and to be worn by women, and not an arbitrary or fanciful name to indicate the maker, and hence that the term as applied to shoes was not the subject of a valid trade mark. But the court held that complainant was entitled to be protected against unfair trade; that the record disclosed that it and its predecessors in business had employed the words "The American Girl" as a trade mark continuously since the year 1896, had extensively advertised their shoes under that name, with the catch-phrase "A Shoe as Good as Its Name," in trade journals and newspapers throughout the United States, and largely throughout the Southern States, and thus established an extensive trade therefor; and that defendant by adopting in the year 1900 and thereafter using the name, "The American Lady," with certain catch-phrases, in connection with shoes made by it, and this with full knowledge of complainant's rights, was guilty of unfair competition, tending to and resulting in confusion in the trade, and that complainant was entitled to relief. The decree of the circuit court was therefore reversed, with directions to decree an injunction and an accounting limited to the time since the commencement of the suit.

Complainant petitioned this Court for a writ of certiorari to review that decision, but this was denied. (214 U. S., 514.)

Thereafter the circuit court, pursuant to the mandate of the court of appeals, made a decree granting an injunction in accordance with the opinion of that court, and referring to a master an accounting of the damages and profits for which defendant might be liable—

limited to shoes sold by the defendant since the filing of the bill in this case, and which were marked with the name "American Lady," and not accompanied with any other matter clearly indicating that such shoes were of the manufacture of the Hamilton-Brown Shoe Company.

An accounting was had, extending from the date of the commencement of the suit to March 10, 1910. Complainant made no attempt to introduce substantial proof as to the amount of its damages, declaring that they were practically incapable of exact computation. All the testimony was directed to the question of defendant's profits.

The master reported that during the period covered by the accounting defendant sold "American Lady" shoes, which, because of differences in marking, he divided into three classes:

Class 1: 974,016 pairs of shoes bearing the words "American Lady" stamped upon the sole, and bearing no other impression or distinguishing mark. The profits upon these were found to be \$254.401.72.

Class 2: 961,607 pairs of shoes marked "American Lady," with the words "Hamilton-Brown Shoe Co." but without the word "Makers" or other matter indicating that the shoes were of defendant's manufacture. The profits upon these were found to be \$190,909.83.

Class 3: 593,872 pairs of shoes marked "American Lady," but bearing also the marks "Hamilton-Brown Shoe Co., Makers." The profits upon these were found to be \$132,740.77.

The master recommended that a judgment be entered for the profits accruing from the first two classes, aggregating \$445,311.55. The profits accruing from the third class he held complainant was not entitled to recover under the opinion of the court of appeals and the decree of the circuit court entered in accordance with it. Both parties having filed exceptions, the district court (successor of the circuit court), overruled those of complainant, sustained those of defendant, and adjudged a recovery of one dollar nominal damages. (192 Fed., 930.)

Complainant appealed to the circuit court of appeals, contending that a decree should have been rendered in its favor for the profits upon the first two classes of shoes, in accordance with the master's recommendation, and that it should have included the profits upon the third class, which were denied by the master.

The court of appeals reversed the decree, with directions that defendant's exceptions to the master's report be overruled, that the report be confirmed, and that a decree be entered against defendant for the amount recommended by him, with costs. (206 Fed., 611.)

This writ of certiorari having been allowed, we proceed to deal with the questions presented by the record.

Regarding the case as one of unfair competition without trade mark infringement, it is insisted by petitioner that the normal recovery does not include the gains and profits of defendant, according to the rule admittedly applicable in equity to trade mark cases, but that injured party is limited to such damages as it shows it has sustained; and that the present case is devoid of circumstances to take it out of the ordinary rule.

If, however, complainant was and is entitled to the use of the words "The American Girl" as a trade mark, in the strict sense of the term, and if the proofs adduced before the master, and his findings thereon, are as applicable to a claim of compensation for infringement of the trade mark as to a claim of compensation for unfair competition in the absence of trade mark, it will not be necessary to pass upon the question of the proper measure of recovery in a non-trade mark case. As above pointed out, a claim of a trade mark right was asserted in the bill, and it has not been abandoned. It was overruled by the circuit court of appeals on the first appeal, upon reasoning with which we are unable to concur. We do not regard the words, "The American Girl," adopted and employed by complainant in connection with shoes of its manufacture, as being a geographical or descriptive term. It does not signify that the shoes are manufactured in America, or intended to be sold or used in America, nor does it indicate the quality or characteristics of the shoes. Indeed, it does not, in its primary signification, indicate shoes at all. It is a farciful designation, arbitrarily selected by complainant's predecessors to designate shoes of their manufacture. We are convinced that it was subject to appropriation for that purpose, and it abundantly appears to have been appropriated and used by complainant and those under whom it claims.

The cases cited to the contrary are distinguishable. In Canal Co. v. Clark (13 Wall., 311, 324), the word "Lackawanna" was rejected as a trade mark for coal because it designated the district in which the coal was produced. Columbia Mill Company v. Alcorn (150 U. S., 460, 466), it was held that "Columbia" could not be appropriated for exclusive use as a trade mark because it was a geographical name. So, with respect to "Elgin," as designating watches (Elgin Natl. Watch Co. v. Illinois Watch Co., 179 U. S., 665, 673); "Genessee," claimed as a trade mark for salt (Genessee Salt Co. v. Burnap, 73 Fed., 818); "Old Country," as a mark for soap (Allen B. Wrisley Co. v. Iowa Soap Co., 122 Fed., 796.) If the mark here in controversy were "American Shoes," these cases would be quite in point. (And see Shaver v. Heller & Merz Co., 108 Fed., 821, 826.) But "The American Girl" would be as descriptive of almost any article of manufacture as of shoes; that is to say, not descriptive at all. The phrase is quite analogous to "American Express," held to be properly the subject of exclusive appropriation as a trade mark for sealing wax in Dennison Mfg. Co. v. Thomas Mfg. Co., (94 Fed., 651, 653).

It is contended that this question is settled otherwise, at least as between these parties, by the decision of the circuit court of appeals on the first appeal and our refusal to review that decision upon complainant's petition for a writ

of certiorari, and that the only questions open for review at this time are those that were before the court of appeals upon the second appeal. This, however, is based upon an erroneous view of the nature of our jurisdiction to review the judgments and decrees of the circuit court of appeals by certiorari under section 240, Judicial Code, derived from section 6 of the Evarts Act of March 3, 1891. (26 Stat., 828, ch. 517.) As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision. (Lau Ow Bew, Petitioner, 141 U. S., 583, 587; in re Woods, 143 U. S., 202; Lau Ow Bew v. United States, 144 U. S., 47, 58; Amer. Const. Co. v. Jacksonville Railway, 148 U. S. 372, 383; Forsyth v. Hammond, 166 U. S., 506, 514; Fields v. United States, 205 U. S., 292, 296.) And, except in extraordinary cases, the writ is not issued until final decree. (Amer. Const. Co. v. Jacksonville Railway, 148 U. S., 372, 378, 384; The Three Friends, 166 U. S., 1, 49; The Conqueror, 166 U. S., 110, 113; Denver v. New York Trust Co., 229 U. S., 123, 133.) The decree that was sought to be reviewed by certiorari at complainant's instance was not a final one, a fact that of itself alone furnished sufficient ground for the denial of the application; besides which it appears, by reference to our files, that the application was opposed by the present petitioner upon the ground that the case, however important to the parties, involved no question of public interest and general importance, nor any conflict between the decisions of State and Federal courts, or between those of Federal courts of different circuits.

It is, of course, sufficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed. And, although in this instance the interlocutory decision may have been treated as settling "the law of the case" so as to furnish the rule for the guidance of the referee, the district court, and the court of appeals itself upon the second appeal, this Court, in now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings. (Panama Railroad v. Napier Shipping Co., 166 U. S., 280, 284; United States v. Denver & R. G. R. R., 191 U. S., 84, 93; Lutcher & Moore Lumber Co. v. Knight, 217 U. S., 257, 267; Messenger v. Anderson, 225 U. S., 436, 444)

Having reached the conclusion that complainant is entitled to the use of the words "The American Girl" as a trade mark, it results that it is entitled to the profits acquired by defendant from the manifestly-infringing sales under the label "American Lady," at least to the extent that such profits are awarded in the decree under review. The right to use a trade mark is recognized as a kind of property, of which the owner is entitled to the exclusive enjoyment to the extent that it has been actually used. (McLean v. Fleming, 96 U. S., 245, 252; Manhattan Medicine Co. v. Wood, 108 U. S., 218, 224.) The infringer is required in equity to account for and yield up his gains to the true owner, upon a principle analogous to that which charges a trustee with the profits acquired by wrongful use of the property of the cestui que trust. Not that equity assumes jurisdiction upon the ground that a trust exists. As pointed out in Root v. Railway Co. (105 U. S., 189, 214) and Tilghman v. Proctor (125 U. S., 136, 148), (patent cases), the jurisdiction must be rested upon some other equitable ground—in ordinary cases, as in the present, the right to an injunction—but the court of equity, having acquired jurisdiction upon such a ground, retains it for the purpose of administering complete relief rather than send the injured party to a court of law

for his damages. And profits are then allowed as an equitable measure of compensation, on the theory of a trust ex maleficio. In the courts of England, the rule seems to be that a party aggrieved must elect between damages and profits, and cannot have both. In this country, it is generally held that in a proper case both damages and profits may be awarded. As already observed, the decree under review allows profits only, confines the allowance to such as accrued after the commencement of the suit, and excludes all sales where the term "American Lady" was accompanied with any other matter clearly indicating that such shoes were of the manufacture of the Hamilton-Brown Shoe Company. It was construed to exclude all shoes bearing in addition to "American Lady" the marks "Hamilton-Brown Shoe Co., Makers." The account was based upon undisputed data, and no reason is suggested why, if otherwise accurate, it is not as properly applicable upon the theory of trade mark as upon that of unfair competition aside from trade mark infringement—at least, so far as defendant is entitled to criticize it; complainant is not attacking the decree.

It is, however, insisted by defendant (petitioner) that whether the recovery be based upon the theory of trade mark, or upon that of unfair competition, the profits recoverable should be limited to such amount as may be shown by direct and positive evidence to be the increment to defendant's income by reason of the infringement, and that the burden of proof is upon complainant to show what part of defendant's profits were attributable to the use of the infringing mark. It is said the true rule is strictly analogous to that applied in patent cases, and Mowry v. Whitney, (14 Wall., 620, 650); Elizabeth v. Pavement Co., (97 U. S., 126, 139); Garretson v. Clark, (111 U. S., 120, 121); Dobson v. Hartford Carpet Co., (114 U. S., 439, 444); Tilghman v. Proctor, (125 U. S., 136, 146); Keystone Mfg. Co. v. Adams, (151 U. S., 139, 147); Westinghouse Co. v. Wagner Mfg. Co., (225 U. S., 604, 615), and Dowagiac Mfg. Co. v. Minnesota Plow Co., (235 U. S., 641) are relied upon. The rule invoked is that which, as pointed out in the last two of these cases, is applicable where plaintiff's patent relates to a part only of a machine or combination or process, or to particular improvements in a machine or other device. In such case, where the invention is used in combination with other elements of value not covered by the patent, so that plaintiff's patent creates only a part of the profits, he is entitled to recover only that part, and must give evidence tending to apportion the profits between the patented and unpatented features. But, as pointed out in the Westinghouse case (p. 618), there is a recognized exception where the plaintiff carries the burden of proof to the extent of showing the entire profits, but is unable to apportion them, either because of the action of the wrongdoer in confusing his own gains with those which belonged to plaintiff, or because of the inherent impossibility of making an approximate apportionment. There-

on established principles of equity, and on the plainest principles of justice, the guilty trustee cannot take advantage of his own wrong.

Assuming the asserted analogy to patent cases to exist, a sufficient reason for not requiring complainant in the present case to make an apportionment between the profits attributable to defendant's use of the offending mark and those attributable to the intrinsic merit of defendant's shoes is that such an apportionment is inherently impossible. Certainly, no formula is suggested by which it could be accomplished. The result of acceding to defendant's contention, therefore, would be to deny all compensation to complainant. And it is to be remembered that defendant does not stand as an innocent infringer. Not only

do the findings of the court of appeals, supported by abundant evidence, show that the imitation of complainant's mark was fraudulent but the profits included in the decree are confined to such as accrued to defendant through its persistence in the unlawful simulation in the face of the very plain notice of complainant's rights that is contained in its bill. As was said by the Supreme Court of California in a similar case, (Graham v. Plate, 40 Cal., 593, 598; 6 Am. Rep., 639, 640):

In sales made under a simulated trade mark it is impossible to decide how much of the profit resulted form the intrinsic value of the commodity in the market, and how much from the credit given to it by the trade mark. In the very nature of the case it would be impossible to ascertain to what extent he could have effected sales and at what prices except for the use of the trade mark. No one will deny that on every principle of reason and justice the owner of the trade mark is entitled to so much of the profit as resulted from the use of the trade mark. The difficulty lies in ascertaining what proportion of the profit is due to the trade mark, and what to the intrinsic value of the commodity; and as this can not be ascertained with any reasonable certainty, it is more consonant with reason and justice that the owner of the trade mark should have the whole profit than that he should be deprived of any part of it by the fraudulent act of the defendant. It is the same principle which is applicable to a confusion of goods. If one wrongfully mixes his own goods with those of another, so that they can not be distinguished and separated, he shall lose the whole, for the reason that the fault is his; and it is but just that he should suffer the loss rather than an innocent party, who in no degree contributed to the wrong.

To the same effect are Avery v. Meikle, (85 Ky., 435, 448; 7 Am. St. Rep., 604, 610); El Modello Cigar Mfg. Co. v. Gato, (25 Fla., 886, 915; 23 Am. St. Rep., 537, 544; 6 L. R. A., 823, 829); Regis v. Jaynes & Co., (191 Mass., 245, 249, 251); Shoe Co. v. Shoe Co., (100 Me., 461, 479); Saxlehner v. Eisner & Mendelson Co., (138 Fed., 22, 24).

Finally, it is contended that the account as stated by the master and confirmed by the circuit court of appeals failed to make due allowance for certain items entering into the cost of manufacturing and selling the shoes in diminution of defendant's profits, including interest on capital, depreciation of real estate, taxes, insurance, advertising, and trade discounts. These are matters of fact, respecting which we see no sufficient reason for disturbing the decree. One of the points most earnestly insisted upon is that certain overhead charges, appearing on defendant's books as "Advance Boston House, \$73,772.03" and "Allowance to Boston, \$103,075.14," of which the amount chargeable pro rata against "American Lady" shoes not marked "Makers," for the period covered by the accounting, was \$10,271.69, ought to have been deducted in computing defendant's profits. The only explanation of these charges is in a stipulation of the parties that they—

represent allowances made by the wholesale house of Hamilton-Brown Shoe Company on goods shipped by it to what is known as the "Boston House," being a separate and distinct corporation from the defendant company, and the amount received by the Hamilton-Brown Shoe Company from the "Boston House" for goods shipped to it was \$73,772.03 and \$103,075.14 less than the price at which the goods were billed to that house, and those items do not represent moneys paid by the Hamilton-Brown Shoe Company

to the "Boston House" or advances by the Hamilton-Brown Shoe Company to the "Boston House."

If, in the master's calculation of the profits, defendant had been charged with sales of the goods at the prices at which they were billed to the Boston House, the insistence that a deduction of \$10,271.69 ought to be allowed as being in the nature of a trade discount would seem correct. But that is not made to appear, and we can not conclude that the master erred in overruling this allowance.

Decree affirmed.

The CHIEF JUSTICE and Mr. Justice VAN DEVANTER are of opinion that the term, "The American Girl," as applied to women's shoes made and sold in America, is geographical and descriptive and not subject to exclusive appropriation as a trade mark, and that upon this record a recovery of the entire profits is not admissible. They therefore dissent.

### Adjudicated Patents.

No. 39,413. Denton and Denton. Design for a pendant or locket. Held void for lack of invention. 225 F. R., 537.

No 664,468. Conrader. Pump-governor. Construed and held not anticipated and valid. 226 F. R., 207.

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(Richards & Co., 1879-1906)

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MAY, 1916

No. 8

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# WM. WALLACE WHITE, Proprietor and Publisher Woolworth Building Borough of Manhattan, New York City, N. Y., U. S. A.

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A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

Edited and Published by

WM. WALLACE WHITE,

Attorney and Counsellor at Law,

Patents and Trade-Marks,

Successor to

RICHARDS & CO.,

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### South African Union.

### Patents. Designs. Trade Marks. Copyright. Consolidation Act.

As we go to press we are in receipt of the Official text of the Patents, Designs, Trade Marks, and Copyright Act, consolidating the various Acts in the different Provinces of the Union of South Africa, passed by the House and assented to by the Governor General April 15, 1916. It is our intention to publish the same at the earliest possible moment. For the steps taken in the consideration of this important measure see 14 P. & T. M. Rev., 131, and prior references there indicated.

### Porto Rico.

### Patents. Trade Marks. Statistics, 1915.

During the year 1915 the number of United States patents registered in Porto Rico was sixteen, while the number of United States trade marks given local registration was eleven. During the same period twenty-four local Porto Rican trade marks were registered. (From 3 Annual Reports, 1915, of War Department, 131.)

### Japan.

### Utility Models. Law Amending Law No. 26 of 1909.\*

The bill having reference to the above, introduced during the last session of the Diet, was promulgated March 17, 1916. It was passed by the two Houses and became effective April 7, 1916.

The duration of protection heretofore granted extended for a period of three years and could be prolonged for another period of three years. Under the present enactment an additional extension covering a period of four years is obtainable, making the whole term of protection now obtainable altogether ten years.

The amended Articles of the law read now as follows:

Art. 9. The period of duration of a utility model right is three years.

The period mentioned in the preceding paragraph may be extended for three years and for an additional term of four years.

Art. 14. A person who has obtained a decision to the effect that the registration shall be granted shall pay, at the time when registration is obtained, in each instance for the first extension a registration fee of thirty Yen, and for the second extension a registration fee of sixty Yen.

### Arthur von Briesen.

### An Appreciation.

The many legal and lay friends of Arthur von Briesen will be gratified to learn of Resolutions of appreciation passed by the Board of Directors of The Legal Aid Society of New York at its March meeting on the occasion of the retirement of Mr. von Briesen from the Presidency of the Society after an uninterrupted and active tenure of office for twenty-six years.

<sup>\*</sup> For translation of text see 7 P. & T. M. Rev., 2846.

As a pioneer in the activities of this organization, Mr. von Briesen for more than a quarter of a century directed the work of the Society, giving his services freely in defense of the oppressed, citizen or alien, and enlisting in like behalf the aid of others.

Today The Legal Aid Society stands as a recognized civic power, conserving the legal rights of those pecuniarily unable to defend themselves against oppression by others, and as a moral force in establishing the civil rights of the poor.

In recognition of his services, Mr. von Briesen received from the President of the French Republic the Cross of the Legion of Honor in 1905, and the following year the Order of the Crown of Prussia from the German Kaiser, but these are as nought compared with the consciousness of a labor of love well done.

### Great Britain.

### Patents. Designs. Trade Marks. Proposed Uniformity of Laws Throughout the Empire.

In the Sydney (Australia) Chamber of Commerce Journal of April 1, 1916, mention is made of the appointment of a committee to report to the Council of the Chamber of Commerce with regard (in addition to other matters) to the "Reform of patents and designs and trade marks laws, with the object of establishing a uniform basis throughout the Empire." The subject in question is preliminary to the consideration of the same and allied matters by the British Imperial Council of Commerce to be held in June of the present year in London for determining the conditions of carrying on trade in the British Empire, and between the British Empire and other nations during and after the war. Such recommendations as are made will probably be referred also to the Australian Commonwealth Conference to be held during the present month (May).

### Patents. Alien Enemies. Patents, Designs, and Trade Marks (Temporary Rules) Acts, 1914.

Notice is hereby given that in the event of the prescribed Renewal Fees due in connection with Patents in respect of which Licenses have been granted by the Board of Trade by virtue of the provisions of the above Acts not being paid by the Patentees, such fees may be paid by the Licensees and the amount of such fees deducted from the royalties payable to the Public Trustee under the License. Licensees should inform themselves as to the dates upon which such fees become payable to avoid having to pay etxension fees also. (From The Illustrated Official Journal (Patents), April 19, 1916.)

### France.

## Patents. War Measures. Practice. Memoir of French Association of Consulting Engineers for Industrial Property.

In view of the many moratoria and other war measures resulting from the present European war, and their effect upon industrial property rights in their divers phases, we believe the following translation of the "Memoir of the French Association of Consulting Engineers for Matters of Industrial Property concerning the Temporary Rules, established by reason of the state of war" will be of

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interest, particularly so, as the practice in France has been based, and has been carried out apparently as nearly as possible, on the principle of reciprocity—to friend and foe alike—and such laws or rules as have been made are the result of a desire to keep alive rights actually or remotely jeopardized by hostilities. The original article may be found in 31 La Propriété Industrielle, 77:

"The disturbances occasioned by the war, relative to patents of invention, are so serious that they injure the belligerents not only in whatever concerns the patents that they possess in their own countries and in those countries at war with them, but also in whatever concerns their patents in allied or neutral States. The citizens of neutral countries are to no greater extent protected from inconveniences: They are injured as to their interests in the belligerent States and even in other neutral countries. The hostilities produce with all patentees uneasiness and troubles more or less important—but all are affected. In certain cases there have been actual losses.

"Disturbances have likewise been introduced into other branches of industrial property, but they are less than those that concern patents of invention.

"In order to minimize as much as possible the injurious results that might be occasioned by irregularities attributable to hostilities, the French Government issued the Decree of Aug. 14, 1914 (see 12 P. & T. M. Rev., 257, Ed.) and the Law of May 27, 1915 (see 13 P. & T. M. Rev., 296, Ed.), which, as a whole, constitute a special set of rules applicable during the war.

"This provisional legislation is based on the following principle: to suspend during the war the payment of taxes and the performance of all formalities, so that at the conclusion of peace the situation of those interested will be the same as it was on Aug. 1, 1914: delays are granted for validly effecting payments and fulfilling the formalities that would have been due during the war.

"It concerns: (1) The French; (2) Foreigners generally, whether they belong to allied, neutral, or enemy countries; (3) Foreigners whose countries are at war with France; and (4) The International Convention of 1883.

"We shall examine successively these four points of view:

"(1) The French. The Decree of Aug. 14, 1914, ratified by the Law of May 27, 1915, suspends, dating from Aug. 1, 1914, the terms concerning the payment of taxes or the working of patents of invention, the renewal of trade marks or the fulfilling of the formalities relative to designs and models of manufacture.

"In order to conserve their rights in all their fullness, the French have thus no tax to pay, nor any formality to fulfill, during the war, and until a date that will be fixed after the conclusion of peace (Art. 1 of the Decree). They may even file applications for patents without paying the amount of the first annuity; but, in this case, the patent is not delivered until after the payment of this tax.

"(2) Foreigners, of allied, neutral, or enemy countries. By its Art. 5, the Law of May 27, 1915, extends the benefits of the Decree of Aug. 14, 1914, to all foreigners (without distinction between allies, neutrals, or belligerents), but on condition that their countries grant complete reciprocity to the French. And by "complete reciprocity" we understand that our citizens will obtain in the foreign State delays for fulfilling formalities or effecting payments that have become due since Aug. 1, 1914, and that they shall suffer no forfeiture due to irregularity or other fact occurring during the war.

"The conditions of reciprocity necessarily vary in their details according to the different legislative measures, principally according to whether they require prior examination or not—but the principle is the same for all; in the mind of the legislator reciprocity exists only when the foreign legislation grants to the French a certain delay after the end of the war: (a) for paying, without surtax, fine, production of justification or special formalities, the filing fees and patent taxes due since Aug. 1, 1914; (b) for proceeding with the delivery of patents whereof the applications were under consideration during the same period, by reviving these applications in the condition in which they were on this date, free from any forfeiture which might be adjudged for causes arising since Aug. 1, 1914; (c) for renewing marks and utility models whose terms have expired since Aug. 1, 1914." (In a note appended, reference is made to the "Report presented to the Chamber of Deputies by Mr. Bokanowski, in the name of the Commission for Commerce and Industry." Ed.)

"(3) Foreigners of Enemy Countries. The situation of foreigners whose countries are at war with France is a trifle more complex. They may, primarily, take advantage of the Decree of Aug. 14, 1914, under the same conditions as other foreigners, and the considerations of the preceding paragraph apply to them completely. In addition, Art. 6 of the Law specifies expressly that they may effect in France all the payments that are requisite for there assuring the maintenance of their rights, and may even file patent applications, on condition that their countries accord the same privilege to our citizens. However, patents whereof applications have been filed by Germans, Austrians or Hungarians shall not be delivered during the continuance of the war; moreover, this restriction in no wise militates against their rights, inasmuch as the effects of the patent count from the date of the filing of the application.

"On the other hand, the Law of May 27, 1915, prohibits generally the exploitation in France of patents and marks belonging to Germans, Austrians, or Hungarians, but rights acquired prior to the declaration of war are respected (Art. 2).

"It has provided finally—in Arts. 3 and 4—for the régime of the obligatory license for patents belonging to such subjects, the exploitation of which might present a public interest or be of use for national defense. An examination of Arts. 3 and 4 makes perfectly plain under what condition obligatory licenses may be granted.

"(4) International Convention of 1883. The terms of priority provided by Art. 4 of the International Convention of 1883 are suspended generally in favor of all those that were able to claim them on Aug. 1, 1914. After the conclusion of peace a decree will determine the date on which these terms of priority shall be revived. This provision has but little interest for the French, inasmuch as it is rather the foreigners belonging to countries of the Union for the Protection of Industrial Property that are called to benefit therefrom; it is the wish of France that no inconvenience shall arise in the rights whose enjoyment they possessed on Aug. 1, 1914.

"However, the law stipulates expressly that this favor is granted only to foreigners whose nation has accorded or shall accord the same favor to the French in their country."

### Porto Rico.

Trade Marks. Tobaccos for Export. National Stamps. Guarantee of Origin.

Act No. 31.

AN ACT TO PROTECT PORTO RICAN CIGARS FROM FRAUDULENT MISREPRESENTATION, BY

PROVIDING FOR ADEQUATE EXPERT INSPECTION, AND THE ISSUE OF STAMPS OF GUARANTEE COVERING THE ORIGIN OF TOBACCO USED IN THE MANUFACTURE OF SUCH CIGARS, INTENDED FOR EXPORTATION, AND FOR OTHER PURPOSES.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1. That the Treasurer of Porto Rico is hereby authorized to employ three additional internal revenue agents who shall be tobacco experts, at salaries of fifteen hundred dollars each per annum; whose duty shall be the registration. in such form as may be directed, of the brands of cigars manufactured in Porto Rico, wholly or in part, from Porto Rican or other tobacco; the recording of leaf tobacco acquired and disposed of in the factories manufacturing cigars for export; the securing and preservation of statistics in relation to leaf tobacco grown in Porto Rico, importation of leaf tobacco, the exportation of cigars and leaf tobacco and the securing and preservation of all such other information in connection with this subject as may be directed by the Treasurer of Porto Rico. Said duty shall also include the inspection and examination of all tobacco on the premises of manufacturers of cigars or cigarettes, whether or not manufactured, for export, for the purpose of preventing and detecting the fraudulent use of guarantee stamps issued for cigars exported from Porto Rico and for the purpose of detecting in the exportation of said cigars, such as are wrongly marked, misbranded or falsely advertised, as Porto Rican, but which are in fact made from tobacco other than that of Porto Rican growth and manufacture.

SEC. 2. That the Treasurer of Porto Rico is hereby authorized to furnish and issue to duly licensed cigar manufacturers in Porto Rico, upon proper application, in such form as he may by regulations prescribe, stamps to be known as "guarantee stamps," for cigars intended for exportation and said stamps shall be affixed to all cigars before they are removed from the place of manufacture Any person exporting from Porto Rico any cigars on which for exportation. the proper guarantee stamps have not been affixed as prescribed herein, or who ships or exports from Porto Rico cigars manufactured with tobacco other than Porto Rican tobacco, under the name of Porto Rican cigars or under any other name whatever, with the object of deceiving the purchaser or consumer, thus leading to the belief, or representing or giving the idea that the tobacco, or such part thereof as is claimed to have been used in the manufacture of said cigars is the product of the soil or of the manufacture of Porto Rico, when said tobacco is not in reality the product of either such soil or manufacture, shall be punished for each offense so committed by a fine not less than two hundred nor more than five hundred dollars, or by imprisonment for not less than two months nor more than six months, or by both penalties in the discretion of the court.

SEC. 3. No charge shall be made for guarantee stamps to be furnished to cigar manufacturers under the provisions of this Act.

SEC. 4. The guarantee stamps shall be issued for such cigars as have been manufactured in Porto Rico wholly from sound and clean Porto Rican tobacco, in sanitary factories and by cleanly operatives; for such cigars as have been manufactured in Porto Rico from Porto Rican filler tobacco and from other than Porto Rican wrapper tobacco, in like sanitary factories and by cleanly operatives; for such cigars, the material of which although of Porto Rican growth, in whole or in part, (as) are manufactured in Porto Rico in sanitary factories by the use of machines; for such cigars as have been manufactured in Porto Rico, in sanitary factories and by cleanly operatives, but from tobacco not of

the growth of Porto Rico, and for such cigars as have been manufactured in Porto Rico, in sanitary factories and by cleanly operatives, from Porto Rican wrapper tobacco and from other than Porto Rican filler tobacco.

Such guarantee stamps as shall be furnished for cigars wholly manufactured from Porto Rican tobacco shall bear the following inscription in Spanish and English: "Cigars manufactured in Porto Rico of tobacco produced in Porto Rico," and such as shall be furnished for cigars manufactured in Porto Rico of tobacco which is not produced in Porto Rico shall bear the following inscription: "Cigars manufactured in Porto Rico of tobacco which is not a product of Porto Rico"; and such guarantee stamps as shall be furnished for cigars manufactured in Porto Rico of Porto Rico and other tobaccos shall bear the following inscription: "Cigars manufactured in Porto Rico of a mixture of Porto Rican and other tobaccos."

- SEC. 5. That all applications for guarantee stamps, before being submitted, shall be duly executed and the information therein contained sworn to as true and correct, by the manufacturers of cigars, or other persons duly authorized to act in their stead, before any internal revenue agent, or other persons authorized to administer oaths in Porto Rico. Internal revenue agents are hereby empowered to administer oaths, the violation of which by any person shall be punished by the proper courts in accordance with the provisions of the Penal Code in force in Porto Rico.
- Sec. 6. That every manufacturer of cigars intended for exportation shall keep in his factory and shall not remove therefrom a tobacco-register book which shall be open at all times to the inspection of internal revenue agents, and wherein shall be noted the quantity, in pounds kind and class of tobacco received, promptly on its receipt in the factory, from whom purchased, the place of growth of same, its disposition, in pounds, before being removed from the factory or distributed therein for manufacturing purposes, the numbers of cigars produced therefrom, partially or wholly from Porto Rican tobacco, the disposition of such cigars and such other information as the Treasurer of Porto Rico shall by regulations prescribe. Every person failing to note in said tobacco-register book the information called for therein, or who falsely enters therein, as Porto Rican, any tobacco not of the growth of Porto Rico, or who shall fail to provide himself with or produce on demand of a duly authorized revenue officer any such book, shall for each such offense thus committed be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned for not less than two months nor more than six months, and for the second and each subsequent offense thus committed both fine and imprisonment shall be imposed.
- SEC. 7. Every person who shall forge, counterfeit or cause or procure to be forged or counterfeited any guarantee stamps provided, made, used and issued in pursuance of this Act, or who shall use or give away for use, any such guarantee stamps, on cigars other than those for which same were obtained, or who shall mark, print, add, alter or remove any marks or words thereon, shall for each such offense thus committed be fined not less than two hundred dollars nor more than five hundred dollars or be imprisoned for not less than one month nor more than six months or both at the discretion of the court.
- SEC. 8. That the Treasurer is hereby authorized to issue such regulations not in conflict with this Act, as may be necessary to properly carry into effect the provisions hereof, and said regulations shall have the force of law.
  - Sec. 9. That the sum of twelve thousand (\$12,000) dollars is hereby ap-

propriated, out of any funds in the Treasury not otherwise appropriated, for the salary, transportation, and per-diem expenses which shall be allowed to the employees appointed under this Act, in lieu of actual costs of subsistence (board and lodging) while so traveling, and for the purchase of necessary office furniture, and such stamps, books and other stationery as may be required in the administration and enforcement of the provisions of this Act.

SEC. 10. That all laws or parts of laws in conflict herewith are hereby repealed.

Sec. 11. That this Act shall take effect July 1, 1916.

Approved, March 11, 1915.

(From Acts and Resolutions of the Eighth Legislative Assembly of Porto Rico, Washington, 1916.)

### Colombia.

### Patents. Trade Marks. Laws. Official Texts.

In accordance with Art. 55 of Law 110 of Dec. 10, 1914, concerning trade marks the Ministry of Agriculture and Commerce of Colombia has published the said law, with its translations in English, French, German, and Italian, for distribution as provided in the said article. For the English text our readers are referred to 13 P. & T. M. Rev., 147, the translation there published being thus utilized in the official pamphlet. Along with it are published other laws of the country governing patents and trade marks now in force under the title "Legislación Vigente sobre Registro de Marcas de Fábrica, de Comercio y de Agricultura y sobre Patentes de Invención.

### Patents. Applications. Publication. Resolution.

(Translation.)

RESOLUTION No. 13 of 1915 (Feb. 26) BY WHICH IS DETERMINED THE NUMBER OF TIMES THAT APPLICATIONS FOR PATENTS OF INVENTIONS SHALL BE PUBLISHED IN THE DIARIO OFICIAL.

THE MINISTER OF AGRICULTURE AND COMMERCE. CONSIDERING:

- I. That Law 110 of 1914,\* "concerning the protection of industrial property," provides in Art. 13 that applications for the registration of marks shall be published in the Diario Oficial three times.
- 2. That Law 35 of 1869,† "Concerning patents of invention, improvement, or the introduction of new industries," provides nothing in respect thereto, and that it is necessary that the public know of these applications adequately, wherefore they ought to be published at least the same number of times as those that refer to marks of manufacture, trade, and agriculture, forasmuch as patents are of greater importance to industry; and
- 3. That through analogy there should be applied to patent applications what Art. 13 of the said Law 110, in relation to applications for the registration of marks, provides,

RESOLVES:

To order the publication of applications for patents of invention in the



 $<sup>^{\</sup>bullet}$  See 13 P. & T. M. Rev., 147 and ft., Art. 13 being on p. 150.  $\dagger$  See elsewhere in this issue of the Review.

Diario Oficial three times at the charge of the party interested, and once the term expired that the law fixes concerning the matter, counted from the day following that of the last publication, to issue the patent, if this be the case.

Be is published and enforced.

(Signed) The Minister, JORGE E. DELGADO.

(From official copy, Legislación Vigente, etc., Bogota, 1915.)

### Patents. Trade Marks. Publication Fees. Resolution.

(Translation.)

RESOLUTION NO. 15 OF 1915 (MARCH 25) WHEREBY NO. 13\* OF FEB. 26 OF THE PRESENT YEAR IS AMENDED, AND THE FEES THAT PATENT APPLICATIONS AND OTHER DOCUMENTS SHALL INCUR FOR THEIR PUBLICATION ARE DETERMINED.

THE MINISTER OF AGRICULTURE AND COMMERCE, RESOLVES:

Applications for patents of invention and certificates for the same shall pay, for the three times that each one of these documents is published in the Diario Oficial, two pesos fifty centavos (\$2.50) and three pesos (\$3), respectively.

The other documents wherewith Resolution No. 47 of the present year, issued by the Government Minister, is concerned, with relation to marks of manufacture, of commerce, and of agriculture, shall pay the fees therein specified at the rate of publication in patent matters.

These fees shall be collected in accordance with what said Resolution No. 4 provides in respect thereto.

Be it published and enforced.

(Signed) The Minister, JORGE E. DELGADO.

(From official publication, Legislación Vigente, etc., Bogotá, 1915.)

### Patents. Law 35 of May 13, 1869. (Translation.)

LAW 35 (MAY 13, 1869) CONCERNING PATENTS OF INVENTION, IMPROVEMENT, OR THE INTRODUCTION OF NEW INDUSTRIES.

THE CONGRESS OF THE UNITED STATES OF COLUMBIA Decrees:

- Art. 1. Every discovery or new invention, in any class of industry, gives to its author, under the conditions and for the term expressed in this Law, the right of availing himself exclusively of his invention or of his discovery. This right is guaranteed by titles issued by the Executive Power of the Union under the name of patents of invention.
- Art. 2. Every Colombian or foreigner that invents or perfects any machine, mechanical apparatus, combination of materials, or method of process, of useful application to industry, the arts or sciences, or any manufacture or industrial product, may obtain from the Executive Power a patent of concession that will assure to him exclusive for a term of from five to twenty years,\* for himself

See elsewhere in this issue of the Review.
 See 14 P. & T. M. Rev., 71.

<sup>•</sup> By law No. 49 of 1911 (Nov. 18), this term is changed to read "from ten to fifty years.

or for whoever with just title represents his rights, the manufacture, sale, or exploitation of his invention or improvement.

- Art. 3. Concessions for the introduction of raw or manufactured products of foreign origin shall not be granted.
- Art. 4. Inventors that have obtained patents in other countries for their discoveries, and who make application in Colombia, may obtain the respective patent of invention, provided that said discoveries be not of public domain.

When a patent of invention is issued in Colombia in behalf of inventions or improvements that have previously obtained the same in other countries, the Colombian patent shall be cancelled as soon as the patent period granted for the foreign patent terminates.

- Art. 5. In order to obtain a patent of invention or of improvement, the party interested shall apply to the Executive Power, for himself or through an attorney, making declaration of the invention or improvement whereof he is the author, describing it with clearness and making application for patent; and in the case of it being granted to him, he shall be obliged, in order to enter into possession thereof and obtain the patent, to present within the term of forty days an exact drawing or model of the respective machine or mechanical apparatus, or a detailed and complete specification of the new method or process and a specimen of the manufacture or product, if it is of possible conservation, in order that it be deposited in the respective Department of State and be utilized in case of litigation arising concerning the patent.
- Art. 6. The patents for these privileges shall be issued, citing therein the present Law, inserting the decree of concession, wherein shall have been mentioned the invention, improvement, or new industry to which it refers, and the term that it comprehends, and declaring the grantee in possession of the privilege; and they shall be published in full in the official periodical of the Nation at least twice.
- Art. 7. The grant of a patent of invention, improvement, or of new industry, shall be made without prior examination concerning the utility of the object or the question of knowing whether it is really an invention or improvement.

On granting it the Government does not declare that the invention or improvement is real or useful, nor whether the patentee is really the inventor, nor whether the object is new, nor the specifications or models true, inasmuch as the right stands without prejudice to others interested to legally prove the contrary.

Paragraph. The Executive Power shall announce in the Diario Oficial, before granting the patent and with anticipation of thirty days, the application that has been made for obtaining said patent.

- Art. 8. Patents shall not be granted unless they fulfill the formalities of this Law, or in case the invention, improvement, or new industry be contrary to public health or security, good morals, or to prior rights.
- Art. 9. The term of the patent expired, the manufacture, sale, or exercise of the invention or improvement whereto the privilege relates shall be free; the specifications filed by the inventor shall be published, and copies of the respective designs or models may be given to whoever applies for them, at his cost. The same shall hold if, prior to said term having expired, the patent is declared annulled or without force.
  - Art. 10. Crimes of imitation, falsification, and others, against the ownership

of patented articles or industries shall be adjudged according to the penal laws of the Union.

- Art. 11. In addition to the case of Art. 4, patents shall become void when they have been issued to the legal prejudice of a third party, which shall be adjudged by the State Tribunals.
- Art. 12. A patent for a new industry shall become void likewise when it has remained one year without being worked, save exceptional cases or those of force majeure.
- Art. 13. The grant of patents shall entail a fee in favor of the National Treasury, payable once only by the grantee at the rate of from five to ten pesos (\$5 to \$10)\* for each year of the concession and at the time of receiving the patent. In every case the person that applies for a patent shall specify the number of years within the maximum fixed, and shall deposit in the General Treasury ten pesos (\$10)\* which he shall forfeit in favor of the Treasury if the patent be not granted and which shall be credited to him as part of the title fee if it be granted.
- Art. 14. The Law of May 15, 1848, concerning "patents of invention or improvement of machines or industrial apparatuses" is abrogated.

Given at Bogotá on the third of May, eighteen hundred and sixty-nine.

(Signatures.)

Be it published and executed. (L. S.)

(Signed) SANTOS GUTIERREZ.

(Signed) ANTONIO M. PRADILLA, Secretary of the Interior and of Foreign Relations, charged

with the Department of the Treasury and Public Industry. (From official copy, Legislatión Vigente, etc., Bogotá, 1915.)

### Australian Commonwealth.

Patents. Regulations (Provisional) Under the Patents Act 1903-1909.\* Statutory Rules, 1916, No. 45, of April 5, 1916.

PROVISIONAL REGULATIONS UNDER THE PATENTS ACT. 1003-1009.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council hereby certify that, on account of urgency, the following Regulations under the *Patents Act*, 1903-1909, should come into immediate operation, and make the Regulations to come into operation forthwith as Provisional Regulations.

Dated this fifth day of April, One thousand nine hundred and sixteen.

(Signed) R. M. Ferguson,

Governor-General.

By His Excellency's Command, (Signed) H. Mahon, Acting Attorney-General.

By amendatory laws of Nov. 22, 1900, No. 218; April 26, 1901, No. 491 bis; March 14, 1902, No. 475; and decrees Nos. 909 and 670, of July 31, 1906 and July 10, 1907, respectively, concerning stamped paper, these fees are greatly increased.

<sup>\*</sup>We are advised by our Sydney correspondent that these Provisional Regulations may be adopted as final regulations without amendment.

Amendment of Patents Regulations, 1912 (Statutory Rules, 1912, No. 76).

Amendment of Regulation 14.

- 1. Regulation 14 of the Patents Regulations, 1912, is amended by adding at the end thereof the following sub-regulations:
  - "(2) Notwithstanding anything contained in sub-regulation (1) of this Regulation—
    - (a) Where a mandamus or, an order in the nature of a mandamus is made by the High Court or the Supreme Court directing the Commissioner to proceed to hear and determine an application, the Commissioner may allow, for the acceptance of the complete specification of that application, an extension of time until the expiration of twelve months from the date of the Order of the Court; and
    - (b) where an appeal is made to the law officer under section 43 of the Act, the Commissioner may allow, for the acceptance of the complete specification of the application, an extension of time until the expiration of three months from the date of the decision of the law officer.
  - (3) No fee shall be payable in respect of any extension of time allowed in pursuance of sub-regulation (2) of this Regulation."
- 2. After Regulation 163 of the Patents Regulation, 1912, the following Regulation is inserted:

Patent Attorneys on Active Service Not Liable to Pay Annual Fee.

- "163A. Notwithstanding anything contained in either of the last two preceding Regulations—
  - (a) where any Patent Attorney is actually serving abroad with the Commonwealth Naval or Military Forces, he shall not be liable to pay such proportionate part of the annual fee as is represented by the period of his service abroad, dating from the date of his embarkation to that of his discharge; and
  - (b) his name shall not be removed from the register for non-payment of the annual fee or any part thereof, until after the expiration of six months from the date of his discharge."

### Amendment of Regulation 170.

- 3. Regulation 170 of the Patents Regulations, 1912, (as amended by Statutory Rules, 1914, No. 69) is amended—
  - (a) by omitting from sub-regulation (3) thereof the words "A member subsequently elected shall hold office for three years from the occurrence of the vacancy which he was elected to fill," and inserting in their stead the words, "A member elected at a subsequent election, other than an election held in consequence of the occurrence of a casual vacancy, shall hold office for three years from the date of his election. A member elected at an election held in consequence of the occurrence of a casual vacancy shall hold office only for the remainder of the term for which his predecessor was elected. In this Regulation 'casual vacancy' means a vacancy occurring otherwise than by the expiration of the term for which the member was elected"; and
  - (b) by adding at the end thereof the following sub-regulation:

- "(4) In the event of the total or partial failure of any election held under the provisions of sub-regulation (3) of this Regulation, any vacancy on the Board may be filled by by the appointment of some person thereto by the Minister."
- 4. After Regulation 170 of the Patents Regulations, 1912, the following Regulation is inserted:

### Attendance of Members.

"170A. The place of any member of the Board shall become vacant if he, without leave of the Board, absents himself from three consecutive meetings of the Board convened after not less than ten days' notice in writing."

5. After Regulation 181 of the Patents Regulations, 1912, the following Regulation is inserted:

Recognition of Certificates of University Examinations.

"181A. In the case of any prescribed subject in which examinations are conducted by any University in Australia, the Board may, if it thinks fit, instead of requiring a candidate to undergo examination in that subject by the Board under these Regulations, accept the certificate of the University that the candidate has satisfied the University in that subject, provided that the Board is satisfied that the standard of the examination is sufficient for the purposes of these Regulations."

### Patents. Trade Marks. Designs. War Measures. Regulations.

Amended Procedure Under Patents (Temporary) Regulations, 1914, Trade Marks (Temporary) Regulations, 1914, and Designs (Temporary) Regulations, 1914.

### COMMONWEALTH OF AUSTRALIA.

Attorney-General's Department, Melbourne, 29th March, 1916.

It is hereby notified for general information, that until further notice, paragraph (1) of the Amended Procedure, dated 10th September, 1915,\* published in the Australian Official Journal of Patents of 12th October, 1915, and the Australian Official Journal of Trade Marks of 8th October, 1915, is amended by omitting therefrom the words "except for the purposes of paragraph 4 hereof."

(Signed) H. Mahon,

Acting Attorney-General of the Commonwealth.

### PROCEDURE.

### (Incorporating all amendments.)

- I. NOTIFICATION OF PROCEDURE TO BE FOLLOWED ON APPLICATIONS FOR THE AVOIDANCE OR SUSPENSION OF PATENTS, TRADE MARKS OR DESIGNS.
- (I) A copy of the application when received will be at once sent to the address for service in Australia given by the patentee, licensee, or proprietor of

<sup>•</sup> For text see 14 P. & T. M. Rev., 143.

the design or trade mark, as the case may be, or to any one whose name appears upon the Register as having an interest in the patent, design, or trade mark.

- (2) The date for hearing the application will be fixed as soon as possible after the receipt of the application and will be notified to the applicant and to the patentee, proprietor, or other person interested, at his address for service in Australia. The application and the date of the hearing will also be advertised in The Official Journal of Patents or The Official Journal of Trade Marks, and in the Commonwealth of Australia Gazette. The date fixed for the hearing will be not less than seven days after the advertisement of the Application in the Journal.
- (3) The applicant must produce evidence at the hearing in respect of the matters contained in—

Paragraphs (a), (b), and (c) of Regulation 3 (1)\* of the Patents (Temporary) Regulations, 1914, or the Designs (Temporary) Regulations, 1914, or the Trade Marks (Temporary) Regulations, 1914, as the case may be, and that he is not himself an alien enemy. The evidence may be either oral or by way of statutory declaration. The patentee, or the proprietor of the design or trade mark, or any one interested, may appear at the hearing in opposition to the application, provided that notice of his intention so to appear be given in writing to the Commissioner at the Patent Office before the date of the hearing.

- II. Notification of Procedure to be followed on Applications by Enemy Subjects for Patents, Trade Marks or Designs, or Oppositions by Enemy Subjects to Applications made by Persons other than Enemy Subjects for Patents, Trade Marks or Designs.
- "(1) During the continuance of the war no patent will be sealed in favour of, and no registration of a trade mark or design will be granted to, subjects of any State at war with the King (hereinafter called 'such subjects').

"The term 'such subjects' will be taken to include-

- "(a) a firm which by reason of its constitution may be considered as managed or controlled by such subjects or the business whereof is wholly or mainly carried on on behalf of such subjects;
- "(b) a company which has received its constitution in an enemy's State; and
- "(c) a company registered in the King's Dominions the business whereof is managed or controlled by such subjects, or is carried on wholly or mainly on behalf of such subjects.
- "(2) As regards applications for patents, designs, or trade marks, no distinction will in the first place be drawn between those made by such subjects and those made by other persons. All proceedings thereunder will be carried on as usual down to and including acceptance; but in the case of applications by such subjects all proceedings thereon subsequent to acceptance (except such proceedings and matters as are mentioned in Section 50 of the *Patents Act*, 1903-1909) will be suspendel until otherwise directed.

"The suspension of proceedings upon applications by such subjects will only be recalled or discharged upon proper terms including, if thought fit, the release of the applicant of the privileges and rights which he would otherwise have under Section 54 of the *Patents Act*, 1903-1909.

<sup>•</sup> See 13 P. & T. M. Rev., 181, 200, 201.

- "(3) As regards inventions communicated by such subjects as aforesaid in respect of which patents are applied for by persons in the Commonwealth, these will be treated in the same manner as if made directly by the Communicator.
- "(4) As regards oppositions to the grant of patents and the registration of trade marks arising after the commencement of the war—
  - "(a) oppositions by such subjects in cases where the grant or registration opposed is one to a British citizen or alien friend will not be entertained; and
  - "(b) in the case where the grant or registration opposed is a grant or registration to any such subject, the notice of opposition will be accepted, but all further proceedings will be suspended until the end of the war."
- III. NOTIFICATION WITH REGARD TO APPLICATION FOR EXTENSION OF TIME FOR DOING ANY ACT OR FILING ANY DOCUMENT UNDER THE PATENTS ACT, 1903-1909, THE TRADE MARKS ACT 1905-1912, OR THE DESIGNS ACT, 1906-1912.

Applicants who fail to conform to the provisions of the Patents Act, 1903-1909, the Trade Marks Act, 1905-1912, the Designs Act, 1906-1912, and the regulations made thereunder, will run the risk of losing their rights, unless they are able to bring themselves under the provisions of Regulation 8 of the Patents (Temporary) Regulations, 1914, Regulation 7 of the Trade Marks (Temporary) Regulations, 1914, and Regulation 8 of the Designs (Temporary) Regulations, 1914, Applications under paragraph (a) of those regulations should be made and will be considered at such time as the applicant, patentee, or proprietor, as the case may be, is in a position to do the act or file the document. Applications under paragraph (b) of those regulations should be made the date for the doing of any such act. (From 11 The Australian Official Journal of Trade Marks, April, 1916, p. 380.)

### Great Britain.

### Trade Marks. Merchandise Marks Act, 1887.\*

[50 & 51 VICT.]

MERCHANDISE MARKS ACT, 1887.

[CH. 28.]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO FRAUDULENT MARKS ON MERCHANDISE. [23rd August, 1887.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

#### Short Title

1. This Act may be cited as the Merchandise Marks Act, 1887.

Offences as to Trade Marks and Trade Descriptions.

- 2.—(1) Every person who—
- (a) forges any trade mark; or
- (b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or

<sup>\*</sup> Due to the present interest in matters germane to the purposes of this Act, and inquiries regarding the provisions of this latter, we deem it advisable to publish the law in its entirety, believing that a study of it may be suggestive of a similar measure to prevent abuses in the United States.

- (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or
- (d) applies any false trade description to goods; or
  - (e) disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or
- (f) Causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.
- (2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—
  - (a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and
  - (b) That on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or
- (c) That otherwise he had acted innocently; be guilty of an offence against this Act.
  - (3) Every person guilty of an offence against this Act shall be liable—
  - (i) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and
  - (ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and
  - (iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed.
- (4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.
- (5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

### Definitions. 46 & 47 Vict., c. 57.

3.—(1) For the purposes of this Act—

The expression "trade mark" means a trade mark registered in the register of trade marks kept under the Patents, Designs and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable:

The expression "trade description" means any description, statement, or other indication, direct or indirect,

- (a) as to the number, quantity, measure, gauge, or weight of any goods, or
- (b) as to the place or country in which any goods were made or produced, or
- (c) as to the mode of manufacturing or producing any goods, or
- (d) as to the material of which any goods are composed, or
- (e) as to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act:

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act:

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise:

The expressions "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate:

The expression "name" includes any abbreviation of a name.

- (2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to good of any such figures, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.
- (3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials of a person which—
  - (a) are not a trade mark or part of a trade mark and
  - (b) are identical with, or a colourable imitation of the name or initials of a person varrying on business in connexion with goods of the same description, and not having authorised the use of such name or initials, and

(c) are either those of a fictitious person or of some person not bonâ fide carrying on business in connexion with such goods.

### Forging Trade Mark.

- 4. A person shall be deemed to forge a trade mark who either—
- (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark.

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

### Applying Marks and Descriptions.

- 5.—(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—
  - (a) applies it to the goods themselves; or
  - (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or
  - (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or
  - (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.
- (2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.
- A trade mark, or mark, or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.
- (3) A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

### Exemption of Certain Persons Employed in Ordinary Course of Business.

- 6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—
  - (a) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for



making, or being used in making, trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

- (b) That he took reasonable precautions against committing the offence charged; and
- (c) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (d) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

### Application of Act to Watches.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made those words or marks shall primâ facie be deemed to be a description of that country within the meaning of this Act, and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

#### Mark on Watch Case.

- 8.—(1) Every person who after the date fixed by Order in Council sends or brings a watch case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch case made in the United Kingdom), and in such a mode as may be from time to time directed by Order in Council.
- (2) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorized to administer such a declaration), or before a justice of the peace, or a commissioner having power to administer oaths in a Supreme Court of Judicature in England or Ireland, or in the Court of Session in Scotland, and shall be in such form as may be from time to time directed by Order in Council.
- (3) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding twenty pounds for each offence.

#### Trade Mark, How Described in Pleading.

9. In any indictment, pleading, proceeding, or document, in which any trade



mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

#### Rules as to Evidence.

- 10. In any prosecution for an offence against this Act,—
- (1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined and may be cross-examined and re-examined in like manner as any other witness.
- (2) In the case of imported goods, evidence of the port of shipment shall be primâ facie evidence of the place or country in which the goods were made or produced.

# Punishment of Accessories.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act, which, if committed in the United Kingdom, would under this Act be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanour had been there committed.

#### Search Warrant.

- 12.—(1) Where, upon information of an offence against this Act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away those goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this Act.
- (2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised and stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.
- (3) Any goods or things forfeited under this section, or under any other provision of this Act may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited may direct and the court may,

out of any proceeds which may be realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

# Extension of 22 & 23 Vict., c. 17, to Offences Under this Act.

13. The Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled, "An Act to prevent vexatious indictments for certain misdemeanours," shall apply to any offence punishable on indictment under this Act, in like manner as if such offense were one of the offences specified in section one of that Act, but this section shall not apply to Scotland.

#### Cost of Defence or Prosecution.

1.4. On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

### Limitation of Prosecution.

15. No prosecution for an offence against this Act shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

#### Prohibition on Importation.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this Act; be it therefore enacted as follows:

# 39 & 40 Vict., c. 36.

- (1) All such goods, and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section forty-two of the Customs Consolidation Act, 1876.
- (2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with and may satisfy themselves in accordance with those regulations that the goods are such as are prohibited by this section to be imported.
- (3) The Commissioners of Customs may from time to time make, revoke and vary, regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the



- purposes of this section, and the mode of verification of such evidence.
- (4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.
- (5) Such regulations may apply to all goods the importation of which is prohibited by this section or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.
- (6) The Commissioners of Customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.
- (7) The regulations may provide for the informant reimbursing the Commissioners of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (8) All regulations under this section shall be published in the "London Gazette" and in the "Board of Trade Journal."
- (9) This section shall have effect as if it were part of the Customs Consolidation Act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

#### 46 & 47 Vict., c. 55.

(10) Section two of the Revenue Act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the first day of January one thousand eight hundred and eighty-eight, without prejudice to anything done or suffered thereunder.

# Implied Warranty on Sale of Marked Goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark, or mark or trade description has been applied the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of Act as to False Description Not to Apply in Certain Cases.

18. Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country



in which the goods were actually made or produced, with a statement that they were made or produced there.

#### Savings.

- 19.—(1) This Act shall not exempt any person from any action, suit or other proceeding which might, but for the provisions of this Act, be brought against him.
- (2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such persons in any prosecution for an offence against this Act.
- (3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bonâ fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

### False Representation as to Royal Warrant.

20. Any person who falsely represents that any goods are made by a person holding a Royal Warrant, or for the service of Her Majesty, or any of the Royal Family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

# Application of Act to Scotland.

21. In the application of this Act to Scotland the following modifications shall be made:

The expression "Summary Jurisdiction Acts" means the Summary Procedure Act, 1864, and any Acts amending the same.

The expression "justice" means sheriff.

The expression "court of summary jurisdiction" means the Sheriff Court, and all jurisdiction necessary for the purpose of this Act is hereby conferred on sheriffs.

#### Application of Act to Ireland.

22. In the application of this Act to Ireland, the following modifications shall be made:

#### 14 & 15 Vict., c. 03.

The expression "Summary Jurisdiction Acts," means, so far as respects the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

The expression "court of summary jurisdiction" means justices acting under those Acts.

# Repeal of 25 & 26 Vict., c. 88.

- 23. The Merchandise Marks Act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this Act; provided that this repeal shall not affect—
  - (a) any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor



- (b) the institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penalty incurred, or for the punishment of any offence committed, before the commencement of this Act; nor
- (c) any right, privilege, liability, or obligation aequired, accrued, or incurred under any enactment hereby repealed.

# United States.

# Patent Office.\* Patent Attorneys. Prohibition of the Use of Names of United States Government Officials. Law.

PROHIBITING THE USE OF THE NAMES OF MEMBERS OF EITHER HOUSE OF CONGRESS FOR ADVERTISING PURPOSES.

An act prohibiting the use of the name of any member of either House of Congress or of any officer of the Government by any person, firm, or corporation practicising before any department or office\* of the Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person, firm, or corporation practicising before any department or office of the Government to use the name of any member of either House of Congress or of any officer of the Government in advertising the said business.

SEC. 2. That this act shall take effect three months after its date. Approved April 27, 1916.

# Patent Office. Rule 22 Amended, May 10, 1916. Effective July 27, 1916.

AMENDMENT TO RULE 22 PROHIBITING THE USE, BY ATTORNEYS, OF THE NAMES OF CONGRESSMEN OR OFFICIALS FOR ADVERTISING PURPOSES.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

Washington, D. C., May 10, 1016.

Acting under the provisions of Section 483 of the Revised Statutes and with the approval of the Secretary of the Interior Rule 22 of the Rules of Practice of the United States Patent office has been amended to read as follows:

- 22. (a) Applicants and attorneys will be required to conduct their business with the Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner, and returned by his direct order.
- (b) Complaints against Examiners and other officers must be made in communications separate from other papers, and will be promptly investigated.
- (c) For gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for the refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

<sup>\*</sup>It will be noted that the present Act, the subject of discussion for some time in Congress, and a measure recommended by the Commissioner of Patents, on its introduction read "before the Patent Office," but on its final passage was extended to include "any department or office."

(d) The Secretary of the Interior may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Patent Office any person, firm, corporation, or association shown to be incompetent or disreputable, or who refuses to comply with the rules and regulations thereof, or who shall with intent to defraud in any manner deceive, mislead or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement, or who guarantees the successful prosecution of any application for patent or the procurement of any patent, or who by word, circular, letter, or advertisement, makes any false promise or misleading representation, (sec. 5. act approved July 4, 1884) or who uses the name of any member of either House of Congress or of any officer of the Government in advertising his business. (Act approved April 27, 1916)\*

This amendment will be effective from and after July 27, 1916.

(Signed) THOMAS EWING,

Commissioner of Patents.

(From 226 Official Gazette, 704.)

# Industrial Property. Conditions Due to War. Reciprocal Extension of Terms. Proposed Legislation. H. R. 13982.

H. R. 13982—(Oglesby).

A BILL TO EXTEND TEMPORARILY THE TIME FOR FILING APPLICATIONS AND FEES AND TAKING ACTION IN THE UNITED STATES PATENT OFFICE IN FAVOR OF NATIONS GRANTING RECIPROCAL RIGHTS TO UNITED STATES CITIZENS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any applicant for letters patent or for the registration of any trade mark, print, or label, being within the provisions of this act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by law, shall be granted an extension of nine months beyond the expiration of said period.

SEC. 2 That the provisions of this act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this act to the citizens or subjects of any country while said country is at war with the United States.

SEC. 3. That this act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this act grants relief shall have the same force and effect as if said default had not occurred.

#### House Report No. 554.

The purpose of the first two sections of this bill is to extend the time for filing of applications and paying of fees on the part of citizens or subjects of foreign countries seeking to obtain patents or the registration of trade marks

<sup>\*</sup> For text of Act authorizing this provision see page 249 of this issue of the Review.

or labels in the United States Patent Office, if the filing of such applications, or paying of such fees, or taking of other required action is rendered impossible on account of a state of war. Section 2 of the bill limits such privileges to citizens or subjects of countries which extend substantially the same privileges to citizens of the United States. This bill is not only for the convenience of foreign applicants but also for the convenience of citizens of the United States who seek to file patent applications in foreign countries and are unable to comply with the rules of such foreign countries in relation thereto because of a state of war.

Many of the other countries extend privileges to citizens of countries which extend reciprocal privileges. The passage of this bill would enable United States citizens to avail themselves of those reciprocal privileges. Section 2 further limits the provisions of the bill to citizens and subjects of countries at peace with the United States.

Section 3 would operate to validate certain applications and letters patent issued to citizens or subjects of foreign countries in which the Commissioner of Patents has accepted applications executed by attorneys for the foreign applicants within the time limited by statute, and has given the applicants time to substitute therefor applications executed by the inventors themselves. Until the present time it has been held that this practice was not authorized by the statute, and the legality of it is open to question. The passage of this bill would save from default all of the applications, numbering several hundred, which have been so treated by the Commissioner of Patents.

The above Bill, introduced March 30, 1916, differs in some respects from H. R. 2196 and S. 4477 referred to in 14 P. & T. M. Rev., 213, in that Bill No. 13982 extends reciprocal privileges to other than "countries actually at war," and limits the operation of the same to Jan. 1, 1918, the former two Bills specifying "until the termination of the war."

# United States Practice.

#### Patents.

226 O. G., 700.

Court of Appeals of the District of Columbia.

EWING, COMMISSIONER OF PATENTS, v. UNITED STATES, ex rel. THE FOWLER CAR COMPANY.

Decided April 24, 1916.

Interference—Practice—Declaration Necessary When Conflicting Claims Exist.

Where two applications are found to contain claims to the same patentable subject-matter, *Held* that the law gives the applicants the right to an interference proceeding notwithstanding the fact that the junior applicant has stated that he invented the subject-matter in question at a date subsequent to the filing date of the senior applicant, and mandamus will lie to compel the institution of the interference.

Mr. R. F. Whitehead for the appellant.

Mr. C. C. Linthicum and Mr. Melville Church for the appellee.

VAN ORSDEL, J.:

This appeal is from a judgment of the Supreme Court of the District of Columbia awarding appellee, petitioner below, a writ of mandamus commanding appellant, the Commissioner of Patents, to declare, or direct to be declared, an interference between petitioner's application for a patent and the application of an undisclosed applicant for a patent for a similar invention.

It appears that on November 18, 1915, the Commissioner wrote a letter to petitioner's attorney stating that there was another application pending in the Patent Office containing substantially the same invention as that defined in seven claims set out in full in the letter. After setting out the claims the letter contained the following request:

In order to determine whether it is necessary to declare an interference you are requested to obtain a statement from Fowler setting forth when he conceived the invention defined in the above quoted claims, when he disclosed it to others and when he reduced it to practice. This statement will not be made a part of the record and will be returned to you.

Shortly thereafter, on November 23, 1915, petitioner's attorney wrote the Commissioner inclosing the following communication from petitioner:

In response to your request I beg to say that I conceived the subject matter of the claim quoted in your letter on or about April 16, 1915, disclosed the same to others and made drawings on or about the same date and have not reduced the invention to practice by constructing any full-sized devices.

On the same date, petitioner, through his attorney, filed an amendment to his application, inserting the claims suggested in the Commissioner's letter, with the following statement:

It is thought that these claims appear in a co-pending application and they are inserted at this time with the request that, if such claims do appear in a co-pending application an interference be declared.

On December 10, 1915, the Commissioner replied to petitioner's attorney, as follows:

The dates of invention claimed by Fowler are subsequent by several months to the filing date of the application of the other party. The other party's case will be passed to issue as soon as possible and when patented will be cited as a reference against such claims in Fowler's application as it may be found to anticipate.

The Commissioner's return to the rule to show cause is based upon the ground that petitioner's date of conception is several months subsequent to the date on which the other application was filed, and that this finding justifies the Commissioner in refusing to declare an interference.

Concededly, the Commissioner found that an interference existed between the pending applications, but to avoid what he deemed must, in all probability, result in fruitless litigation he refused to declare an interference. It is urged by counsel for petitioner that, having found the existence of an interference, the Commissioner is without discretion to refuse its declaration. That the finding of an interference is a matter confided to the discretion of the Commissioner was held by this court in *Trussed Concrete Steel Co. v. Ewing*, (42 App., D. C., 179) where the court in its opinion said:

The determination of the existence of an interference is confided by the statute to the judgment and discretion of the Commissioner of Patents; and whether in the exercise of that judgment in the present case he was right or wrong, the conclusion was a possible one, and is not subject to review by mandamus. (United States, ex rel. Ness, v. Fisher, 223 U. S., 683.)

But we have here a different case. Not only had an interference been found to exist, but the claims in interference were suggested in the Commissioner's letter to petitioner. Section 4904, Revised Statutes United States, defining the procedure in the Patent Office when the Commissioner is of opinion that an interference exists between pending applications, read as follows:

Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the Primary Examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who is adjudged the prior inventor unless the adverse party appeals from the decision of the Primary Examiner, or of the Board of Examiners-in-Chief, as the case may be, within such time, not less than twenty days, as the Commissioner shall prescribe.

Section 483, Revised Statutes, confers upon the Commissioner of Patents, subject to the approval of the Secretary of the Interior, the power to—

establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

In the exercise of this power the following regulations, constituting the rule of procedure in such cases, and having the force of statute while in existence, were promulgated and put in force:

93. An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference, for although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to the person who proves to be the prior inventor.

94. Interferences will be declared in the following cases, when all the parties claim substantially the same patentable invention:

(1) Between two or more original applications containing conflicting claims.

The limitations upon the power of courts to control executive or judicial officers by mandamus are well defined. Where official or judicial discretion is reposed in such an officer, the exercise of that discretion cannot be controlled by mandamus. The remedy, however, may be invoked to compel the officer to act. As we have observed, the Commissioner may not be compelled to find the existence of an interference. Neither can he be compelled to decide the issue raised in a particular way. But we are here asked to compel action,—not to control discretion. Congress has created a statutory right in applicants for patents, when conflict is found by the Commissioner to exist between pending applications in the Patent Office. The mere finding of the existence of such a conflict presents an issue which justice demands shall be litigated between the parties. In the case of conflicting applications, Congress has provided a tribunal and procedure for ascertaining who, in fact, is the real inventor and entitled to priority and the patent. The statute is mandatory upon the Commissioner to permit the

parties, or either of them, to invoke its aid. The Commissioner has no more power to refuse to put the machinery of the law in operation by declaring an interference and taking jurisdiction of such a case, than this court would have to refuse to take jurisdiction of an appeal taken in accordance with the law and the rules governing its appellate procedure.

The procedure provided by statute for the protection of the rights of the citizen, whether in the courts or in the departments of the Government, is mandatory upon the officers charged with its administration. No rule of convenience to avoid delays caused by the great volume of business, or for any other reason, will justify such a departure from the course of procedure defined, as will deprive an applicant for a patent of his statutory rights. It may well be that, in the great majority of cases, a litigant in the position of petitioner cannot possibly prevail in the course of litigation following the declaration of an interference. But it is designed for the protection of the property rights of the small minority who may be found entitled to prevail.

If the welfare of the public business demands an amendment of the procedure, it is a matter for the legislative department of the Government, and not for the executive or judicial departments. The finding by the Commissioner of the existence of an interference raises an issue between the parties upon which they are entitled to be heard, and the statute points out the remedy. When this stage is reached, the statute provides for an adjudication "to determine the question of priority of invention." It is not possible for the Commissioner by any short cut he may devise to deprive the applicant of this right. He is required to put the machinery of the law in operation by the declaration of the interference as prescribed by the rules. No discretion is reposed in him. The duty is imperative.

The judgment is affirmed with costs. Affirmed.

# International Union.

Official Journals. Contents.

LA PROPRIÈTÈ INDUSTRIELLE.

MARCH.

OFFICIAL PART. Domestic Legislation: A. Measures taken by reason of the present state of war. Germany. Notice concerning the prolongation of terms of priority in Denmark and Hungary (Feb. 8, 1916).—Austria. Ordinance concerning the exceptional provisions taken on the subject of terms of priority in favor of Swiss citizens (Feb. 22, 1916).—Spain. Royal decree extending for patents of invention the terms of priority established by Art. 4 of the International Convention (Feb. 25, 1916).—British India. Regulation (temporary) concerning patents and designs, 1915; ordinance conferring authorization to pay in enemy countries the taxes for patents and designs (No. 149, of Jan. 9, 1915).—ITALY. I. Decree making the decree of June 20, 1915, applicable to Norwegian, Belgian, and Danish subjects (Dec. 20, 1915).—II. Decree making the decree of June 20, 1915, applicable to Russian and Spanish subjects (Jan. 22, 1916).—Decree verifying reciprocal treatment in favor of Austrian subjects in industrial property matters (Feb. 5, 1916).—IV. Decree verifying reciprocal treatment in favor of German subjects in industrial property matters (Feb. 19, 1916).—V. Decree

verifying reciprocal treatment in favor of Swiss citizens in industrial property matters (Feb. 22, 1916).—B. Ordinary Legislation. New Zealand. Trade Marks regulation (of May 21, 1912) (first part).

UNOFFICIAL PART. Jurisprudence: Austria. I. Enemy; right to legal remedies: English house placed under the direction of the State; consent of the Overseer.—II. Enemy; right to legal remedies sub-ordinate to the existence of formal reciprocity; English house.—International Union, Art. 4; the term of priority cannot be claimed except by virtue of the first deposit in a Union country.

Miscellaneous News: UNITED STATES. Reorganization of the Patent Office.—Great Britain. New numbering of published patent specifications.—Hungary. Extension of the terms of priority in favor of Swiss citizens.—South African Union. Proposed law concerning industrial property.

Statistics: JAPAN. Industrial property, 1913, classified by countries.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, OF PATENT AND TRADE MARK REVIEW, published monthly at New York, N. Y., for April 1, 1916.

State of New York, County of New York.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Wm. Wallace White, who, having been duly sworn according to law, deposes and says that he is the Editor of the Patent and Trade Mark Review, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Name of—
Publisher, Wm. Wallace White,
Editor, Wm. Wallace White,
Managing Editor, None;
Business Managers, None.

Post office address-

233 Broadway, New York City;

233 Broadway, New York City;

- 2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding I per cent or more of the total amount of stock.)

  Wm. Wallace White,

  233 Broadway, New York City.
- 3. That the known bondholders, mortgagees, and other security holders owning or holding I per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

(Signed) WM. WALLACE WHITE,

Sworn to and subscribed before me this Signature of Editor, Publisher. 22d day of March, 1916.

(Signed) JOHN C. SANDERS,

(My commission expires, Mth. 30, 1917.)

[SEAL.] Notary Public, Bronx County,
Bronx County, No. 4; Register's No. 726.
Certificate filed in New York County.
New York Clerk's, No. 127; Register's No. 7160.

### Cuba.

Trade Marks. Designs. Models. Oppositions. Publication. Decree of Sept. 9, 1915. Correction.

Attention is called to the fact that the word "Trade Mark" should be substituted for "Patent" in the sub-heading of the translation of the above mentioned decree published in 14 P. & T. M. Rev., 197 (April, 1916).

# WM. WALLACE WHITE

Counselor-at-Law

United States and Foreign Patents and Trade Marks

Woolworth Building

New York City

(Richards & Co., 1879-1906)

# **Translations**

FRENCH — GERMAN — SPANISH — ITALIAN — PORTUGUESE

Literary — Legal — Technical — Scientific

Reference: Patent and Trade Mark Review

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# WM. WALLACE WHITE, Proprietor and Publisher Woolworth Building Borough of Manhattan, New York City, N. Y., U. S. A.

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# Patent and Trade Mark Review

Copyright, 1915, by Wm. Wallace White

A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

Edited and Published by
WM. WALLACE WHITE,
Attorney and Counsellor at Law,
Patents and Trade-Marks,
Successor to
RICHARDS & CO.,

WOOLWORTH BUILDING, NEW YORK CITY.

Thirteen Volumes of the *Review* have been completed, the first beginning with October, 1902, and each subsequent volume with the October issue of the next succeeding year.

Volumes 1 to 10 were paged continuously, but in the new series beginning with Volume 11 each volume will be paged independently.

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ADVERTISING RATES ON APPLICATION

MATTER THAT APPEARS IN THE REVIEW, NO RESPONSIBILITY IS ASSUMED ON ACCOUNT OF ERRORS OR INACCURACIES WHICH MAY OCCUR THEREIN.

### Chili.

Trade Marks. Proposed Law. Status. Postponement of Consideration.

The latest reports from Santiago are to the effect that the proposed trade mark law (see 14 P. & T. M. Rev., 195), after having been approved by the Chamber of Deputies, failed of endorsement in the Senate, and its consideration has been deferred until the convening of the next Congress.

# Nigeria.

# Patents. Proposed Law.

We are advised by our Nigerian correspondents that the draft of the New Patents Ordinance has just been published—a step towards the consolidation of the laws in this particular noted in 12 P. & T. M. Rev., 352—and that the Bill, now under consideration, should pass in a few weeks time. It will be remembered that the Protectorates of Northern and Southern Nigeria became amalgamated on Jan. 1, 1914.

# Mexico.

Patents. Trade Marks. Revalidation. Extension of Term to September 30, 1916.

According to latest advices received from our Mexican correspondents the term for revalidating patents and trade marks that were granted or registered during the so-called Huerta and Convention Governments has once more been extended from May 31, 1916 (14 P. & T. M. Rev., 132) to September 30, 1916. Holders of Mexican patents or owners of registered Mexican trade marks, who have not as yet availed themselves of the opportunity to revalidate the patents and trade marks in question will do well to do so now, inasmuch as an additional extension of term for revalidation may not be granted.

# Venezuela.

Industrial Property. Unfair Trade. Penalties. Penal Code of 1915. Effective Sept. 16, 1915.

(Translation.)

Section V. Crimes against Public Confidence.

Chap. V. Frauds committed in trade, industry, and public sales.

Art. 320. Whoever shall have counterfeited or altered the names, marks or distinctive signs of intellectual productions or of manufactured products, or whoever shall have made use of the names, marks, or signs legally registered, under this counterfeit or altered form, even though the falsification be due to a third party, shall be liable to imprisonment for from one to twelve months.

The same penalty shall be applicable to whoever shall have counterfeited or altered industrial designs or models, and to whoever shall have made use thereof under this counterfeited or altered form, although the falsification be due to a third party.

The judicial authority may order that the conviction be published in a periodical indicated by it at the expense of the guilty party.

Art. 321. Whoever, for a commercial purpose, shall have introduced into the country, placed on sale, or put into circulation in any other manner, intellectual productions or manufactured products bearing counterfeited or altered names, marks, or distinctive signs, or names, marks, or distinctive signs susceptible of deceiving the purchaser as to the origin or quality of these objects, shall be amenable—if the ownership of the productions, names, marks, or signs has been legally registered in Venezuela—to imprisonment for from one to twelve months.

Art. 322. Whoever shall have made public information relative to inventions, scientific discoveries, or industrial applications that are to remain secret, and of which he shall have had knowledge by reason of his position, employment, or profession, art or industry, shall be, on petition of the injured party, amenable to imprisonment for from fifteen days to three months. (From 32 La Propriété Industrielle, April, 1916.)

# Great Britain.

# Patents. Applications. Reference to Prior Specification Required. Rejection on Appeal. Decision of December 17, 1916.

An application for a patent for "Improvements in and relating to non-refillable bottles" was filed on the 9th of June, 1914, the application being numbered 13,954. The Examiner cited several prior specifications in which applicant's invention had been described or claimed, and, due to amendment made in response to the Office action, the question of anticipation of applicant's specification narrowed down to Sherman's specification No. 23,900 of 1913.

At the hearing the Supervising Examiner decided to accept applicant's specification, with the proviso, however, that a reference to the above mentioned cited specification be inserted in accordance with Section 7 (4) of the Act. Applicant appealed to the Law Officer and the appeal came on before the Solicitor-General. Appellant's attorney moved that applicant be allowed to amend his specification so as to avoid the necessity for the reference and to have the case referred back to the Patent Office. The Law Officer held that on comparison of applicant's complete specification with that of Sherman's it will be obvious that applicant's claim is closely allied to Sherman's specification and that appellant's motion to refer the application back to the Patent Office in order to enable the further amendment of applicant's claim would be futile, since it would be impossible for the applicant to draw his claim in such a manner as to avoid the necessity of a reference to the cited specification in question. Appellant's motion to have the case referred back to the Office was denied. (From 23 Reports of Patent, Design and Trade Mark Cases, No 7, p. 137.)

# Austria.

# Patent Office. Retirement of the President, Baron Beck de Mannagetta.

After an administrative activity of more than forty-three years, Baron Beck de Mannagetta, President of the Patent Office, on his own application has been permitted to retire, and this under the most flattering conditions.

Baron Beck took an important part in the development of Austrian legislation in patent and trade mark matters; it was also under his direction that projects of law were elaborated concerning industrial designs and models and the suppression of unfair trade, whose submission to parliamentary deliberation was only prevented by the European war. He is, in addition, the author of esteemed works of erudition concerning the protection of inventions in Austria, at first under the régime of privileges, and later under that of patents of invention.

A strict upholder of the international protection of industrial property, Baron Beck was the chief instigator of the accession of Austria to the International Convention and to the Agreement concerning the international registration of marks of manufacture and of commerce. Since this accession, he worthily represented his country at the Conference of Washington (1911); but before this date he had already taken part in the Conference of Brussels (1897 and 1900) and in the Technical Reunion at Berne (1904); he was in addition an assiduous member of the International Association for the Protection of Industrial Property. Baron Beck, therefore, is well known to a great part of our readers, who will not have forgotten his distinguished appearance, along with a rare gentleness of character. We offer our best wishes for his long enjoyment, in good health, of the rest that his kindly activity has so well merited. (Translated from 32 La Propriété Industrielle, April, 1916.)

# Trade Marks. "Austro-Berne." Deceptive. Annulled. Decision.

In a decision, rendered by the Ministry of Public Works, October 30, 1914, and published in Oesterreichisches Patentblatt, Nov., 1915, the trade mark "Austro-Berne" was declared void and ordered to be removed from the register. Section 4 of Art. 3 of the Austrian Trade Mark Law provides, among other things, that marks containing inscriptions or statements that are not in conformity with all facts or the truth and are calculated to deceive the consumer shall be excluded from registration. The trade mark in question consists of the two words "Austro" and "Berna," and it was held that the Roman designation "Austro" and the Italian name "Berna" would be readily construed by the German speaking public as having reference to "Austrian" and "Berne," and consequently are calculated to give the false impression that goods so marked originate from establishments situated in Austria and Berne. Another reason given for ordering the annulment of the mark was that registrant's attorney not only did not produce any proof that establishments were conducted under the style of "Austro-Berna" in Austria as well as in Berne, but that he, on the contrary, made declaration in effect that the Austrian establishment has no connection whatsoever with any establishment in Switzerland.

# Australian Commonwealth.

Patents. Provisional Regulations under the Patents Act 1903-1909, and the Patents, Trade Marks and Designs Act 1914-1915.

STATUTORY RULES, 1916, No. 66 of April 19, 1916.

I, the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby certify that, on account of urgency, the following Regulation under the *Patents Act*, 1903-1909, and the *Patents, Trade Marks and Designs Act*, 1914-1915, should come into immediate operation, and make the Regulation to come into operation forthwith as a Provisional Regulation.

Dated this nineteenth day of April, one thousand nine hundred and sixteen.

(Signed) R. M. FERGUSON,

Governor-General.

By His Excellency's Command, (Signed) H. Маном, Acting Attorney-General.

Amendment of Patents (Temporary) Regulations, 1914 (Statutory Rules, 1914, No. 174).\*

The Patents (Temporary) Regulations, 1914, are amended by adding at the end of Regulation 8 the following paragraph:

"(c) Where the doing of any act would by reason of the present state of war be prejudicial to the public interest." (From 24 The Australian Official Journal of Patents, May 2, 1916, p. 386.)

# Trade Marks. Provisional Regulations under the Trade Marks Act 1905-1912 and the Patents, Trade Marks and Designs Act 1914-1915.

STATUTORY RULES, 1916, No. 64, of April 19, 1916.

I, the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby certify that, on account of urgency, the following Regulations under the *Trade Marks Act*, 1905-1912, and the *Patents, Trade Marks and Designs Act*, 1914-1915, should come into immediate operation, and make the Regulation to come into operation forthwith as a Provisional Regulation.

Dated this nineteenth day of April, One thousand nine hundred and sixteen.

(Signed) R. M. FERGUSON, Governor-General.

By His Excellency's Command,
(Signed) H. Mahon,
Acting Attorney-General.

Trade Marks (Temporary) Regulations, 1914 (Statutory Rules, 1914, No. 175).\*

Amendment of April 19, 1916.

The Trade Marks (Temporary) Regulations, 1914, are amended by adding at the end of Regulation 7 the following paragraph:

"(c) Where the doing of any act would by reason of the present state of war be prejudicial to the public interest." (From 11 The Australian Official Journal of Trade Marks, May 5, 1916, p. 426.)

# Designs. Provisional Regulation Under the Designs Act 1906-1912 and the Patents, Trade Marks and Designs Act 1914-1915.

STATUTORY RULES, 1916, No. 65, of April 19, 1916.

I, the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby certify, that, on account

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<sup>\*</sup> For text see 13 P. & T. M. Rev., 181.

<sup>\*</sup> For text see 13 P. & T. M. Rev., 200.

of urgency, the following Regulation under the Designs Act, 1906-1912, and the Patents, Trade Marks and Designs Act, 1914-1915, should come into immediate operation, and make the Regulation to come into operation forthwith as a Provisional Regulation.

Dated this nineteenth day of April, One thousand nine hundred and sixteen.

(Signed) R. M. FERGUSON, Governor-General.

By His Excellency's Command, (Signed) H. Манон, Acting Attorney-General.

Designs (Temporary) Regulations, 1914 (Statutory Rules, 1914, No. 176).\*

Amendment of April 19, 1916.

The Designs (Temporary) Regulations, 1914, are amended by adding at the end of Regulation 8 the following paragraph:

"(c) Where the doing of any act would by reason of the present state of war be prejudicial to the public interest." (From 11 The Australian Official Journal of Trade Marks, May 5, 1916, p. 426).

# South African Union.\*

Patents. Law (Consolidating and Amending). Patents, Designs, Trade Marks, and Copyright Act, 1916, Assented to April 15, 1916.

ACT TO CONSOLIDATE AND AMEND THE LAWS RELATING TO THE GRANTING OF LETTERS PATENT FOR INVENTIONS AND FOR THE REGISTRATION OF PATENTS, TRADE MARKS AND COPYRIGHT.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:

#### INTRODUCTORY.

#### Division of Act.

1. This Act is divided into five Chapters relating to the following matters:

Chapter I.—Patents;

Chapter II.—Designs;

Chapter III.—Trade Marks;

Chapter IV.—Copyright;

Chapter V.—General and Supplementary Provisions.

Chapters I. II, and III are divided into Parts.

The Parts of Chapter I severally relate to

Definitions and Transitional Provisions (Part I):

Registration of Patents (Part II);

Procedure, for obtaining a grant of Letters Patent (Part III);

Working of Patents and Compulsory Licences (Part IV);

Infringement of Patents (Part V);

Rights of the Crown in respect of Patented Inventions (Part VI);

<sup>\*</sup> For text see 13 P. & T. M. Rev., 201.

<sup>\*</sup> Consolidation of the Laws of Cape of Good Hope, Natal, Orange Free State, and Transvaal.

Patent Agents (Part VII);

Miscellaneous Provisions (Part VIII).

The Parts of Chapter II severally relate to

Transitional Provisions (Part I);

Registration of Designs (Part II);

Copyright in Registered Designs (Part III);

Legal Proceedings (Part IV);

General (Part V).

The Parts of Chapter III severally relate to

Transitional Provisions (Part I);

Registrable Trade Marks (Part II);

Registration of Trade Marks (Part III);

Assignment of Registered Trade Marks (Part IV);

Register of Trade Marks (Part V);

Miscellaneous Provisions (Part VI).

### Operation of Act and Particular Chapters Thereof.\*

- 2. (1) Any Chapter of this Act shall come into operation on such date as the Governor-General may by proclamation in the Gasette fix.\*
- (2) Different dates may be fixed for the coming into operation of any Chapter of this Act, and the date fixed for the coming into operation of Chapters I, II, III or IV shall be the date upon which those provisions of Chapter V which are incidental to the provisions of any other particular Chapter shall come into operation.
- (3) The date of operation of any Chapter of this Act is hereinafter referred to as the commencement of that Chapter.

# Ministerial Responsibility for Administration of Act.

3. The Minister of Justice, or any other Minister of State whom the Governor-General may assign for the purpose shall be charged with the administration of this Act.

The Minister of Justice or (as the case may be) any other Minister of State so assigned, is in this Act referred to as the Minister.

# Establishment of Offices.

- 4. For the purposes of this Act there shall be established offices called respectively
  - (a) the patent office;
  - (b) the designs office:
  - (c) the trade marks office;
  - (d) the copyright office;

and each such office shall be at Pretoria.

Registrar of Patents, Designs, Trade Marks, and Copyright and Appointment of Other Offices.

5. (1) There shall be an officer for the Union styled the registrar of patents, designs, trade marks and copyright, who shall be appointed by the Governor-

<sup>\*</sup> At the time of going to press we have received word that there is little probability of any part of this Act becoming effective before 1917.



General, subject to the laws relating to the public service, and who shall, under the Minister, have the chief control of the several offices established under the last preceding section.

(2) The Governor-General may, subject to the provisions of the laws relating to the public service, appoint in any office established under the last preceding section such examiners and other officers as may be necessary for carrying out the provisions of any Chapter of this Act.

#### CHAPTER I.

#### PATENTS.

PART I.—DEFINITIONS AND TRANSITIONAL PROVISIONS.

Interpretation of Terms Used in This Chapter.

6. For the purposes of this Chapter

"inventor" shall not include a person importing an invention from outside the Union;

"invention" shall, unless the context of any provision of this Chapter otherwise requires, mean any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement thereof, capable of being used or applied in trade or industry, and not known or used by others in the Union, and not patented or described in any printed publication in the Union or any other country, before the application for a patent in respect of the same;

"patent office" shall mean the patent office established under section four; "patent" shall mean letters patent for an invention granted in the Union; "patented article" shall mean an article in respect of which a patent has been granted:

"patentee" shall mean the person for the time being entitled to the benefit of a patent;

"Provincial Patent Act" shall mean a law relating to patents which was in force in any Province on the 31st day of May, 1910, and shall include all regulations in force thereunder.

Saving as to Existing Proceedings, Rights and Liabilities Under Provincial Patents Acts.

7. The provisions of this Chapter shall not affect any proceedings under any Provincial Patent Act, nor save as is otherwise expressly provided in this Chapter, any right or liability acquired or incurred before the commencement of this Chapter; and any pending proceedings may, subject to the provisions relating to the transfer of patent administrations to the patent office, be continued and completed as if this Chapter had not been enacted.

Grant to Patentee Under Provincial Patents Act of Union Patent Under this Chapter.

8. (1) The patentee under a Provincial Patent Act, whose patent is still in force, may, within one year after the commencement of this Chapter, make application for an Union patent for his invention. Save as otherwise prescribed, all proceedings in connection with such an application shall be taken within the times

and in the manner prescribed for ordinary applications, and shall be subject to the payment of any prescribed fees.

- (2) The registrar may grant a patent under this Chapter for that invention; but such patent shall be granted without prejudice to any prior rights acquired by any other person in respect of the same invention in any Province.
- (3) Every patent granted under this section shall be for the unexpired period of the first patent under a Provincial Patent Act.
- (4) Subject to the provisions of sub-section (2), the grant of a patent under this section shall be valid notwithstanding that before the application for such grant an invention has been published in any Province.
- (5) The patent under the Provincial Patent Act shall continue in force notwithstanding the grant of a patent under this Act.
- (6) Any Province (other than that in which the provincial patent was granted) may, if the applicant so notify his desire in his application, be excepted from such patent.
- (7) In any proceedings in which the validity of a patent granted under this section comes into question the court may, if it thinks fit, direct that any Province shall be excepted from such patent.

Transfer of Administration of Provincial Patent Acts to Patent Office.

- 9. (1) The Governor-General may, by proclamation in the Gazette, declare that on a date therein specified the administration of any Provincial Patent Act shall be transferred to the patent office established under this Act.
  - (2) On and after the date so specified
  - (a) the Provincial Patent Acts of the Province mentioned in the proclamation so far as they have any relation to patents shall, subject to the provisions of this Act, cease to be administered in the office in which it was being administered at that date, and the registrar shall thereafter administer those Acts so far as is necessary for the purpose of completing then pending proceedings and giving effect to then existing rights, and shall collect the fees due from time to time under those Acts;
  - (b) all powers and functions vested under any Provincial Patent Act in any Governor, Minister, officer or authority shall vest in the Governor-General, or in the Minister, officer or authority exercising similar powers or functions under the Union as the case requires or as is prescribed;
  - (c) all registers of patents under the Provincial Patent Acts shall be incorporated with and form part of the register established under this Chapter.
- (3) After the administration of the Provincial Patent Acts of any Province has been transferred to the patent office, no application for a patent under those Acts shall be receivable except pursuant to some right previously acquired. But nothing in this Chapter shall be construed as preventing any person who has obtained provisional protection in respect of an invention under a Provincial Patent Act from obtaining a patent for that invention under that Provincial Patent Act.

# Application of Chapter.

10. Save as is otherwise expressly provided, this Chapter shall apply to all patents granted either before or after its commencement, under any Provincial Patent Act, in substitution for the provisions which would have applied thereto if this Chapter had not been enacted: Provided that the date of the expiration

of such patent shall not be affected by this Chapter: Provided further that no such patent shall be liable to revocation, save upon some ground on which it would have been liable to be revoked in terms of the law under which it was granted: Provided also that all fees connected therewith shall continue to be payable, as if this Chapter had not been enacted.

#### PART II.—REGISTRATION OF PATENTS.

# Keeping of Register of Patents.

- II. (1) There shall be kept at the patent office a register of patents, wherein shall be entered
  - (a) the names and addresses of grantees of patents;
  - (b) notifications of assignments and transmissions of patents, of licences under patents, and of amendments, extensions and revocations of patents; and
  - (c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.
- (2) Copies of all deeds, agreements, licences and other documents affecting the proprietorship in any letters patent, or in any licence thereunder must be supplied to the registrar in the prescribed manner for filing in the patent office.

### Rights of Registered Proprietor of Patent.

- 12. (1) The person appearing from the register of patents to be the proprietor of a patent shall, subject to any rights appearing from such register to be vested in any other person, have power to deal with the patent as if he were the absolute owner thereof.
- (2) The provisions of sub-section (1) shall not protect any person dealing with the registered proprietor other than as a bona fide purchaser for value, and without notice of any fraud on the part of the registered proprietor.

# Correction of Errors and Omissions, etc., in Register.

- 13. (1) The registrar may, on request in writing, accompanied by the prescribed fee, correct any clerical error in or in connection with an application for a patent or in any patent or any specification.
- (2) The court may, on the application of any person who complains of a wrong entry or wrong omission of an entry or of any other particulars in the register of patents, make such order for the striking out, insertion or amendment of such entry as it shall deem necessary.
- (3) The court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection therewith.

PART III .- PROCEDURE FOR OBTAINING THE GRANT OF LETTERS PATENT.

# (a) Application.

#### Who May Apply for a Patent.

- 14. (1) The following persons, whether British subjects or not, may make application for a patent:
  - (a) The inventor either alone or jointly with one or more other persons; or
  - (b) the inventor jointly with the assignee of a part interest in the invention; or
  - (c) the assignee of the inventor either alone or jointly with one or more other persons.
- (2) If the inventor or his assignee or the assignee of a part interest in the invention is deceased, the application may be similarly made by or on behalf

of the legal representative of such inventor, assignee, or assignee of a part interest in the invention.

# Form of Application for a Patent.

- 15. (1) An application for a patent shall be made in the form prescribed, and must be lodged by being left at or sent by post to the patent office in the prescribed manner.
- (2) The application must contain a declaration in the prescribed form setting out the facts relied on to support the application, and must be signed by the applicant (or his agent or attorney) and it must contain an address in the Union to which all notices, requisitions and communications of every kind may be made.
- (3) An assignee or legal representative, making or joining in an application and an agent or attorney signing an application must furnish such proof of title or authority as the registrar may require or as may be prescribed.
- (4) An application must be accompanied by a provisional or a complete specification in quadruplicate.
- (5) Subject to the provisions of this Act, the application shall date from the day when it is received at the patent office.

### Specifications, Form and Contents of.

- 16. (1) All specifications must commence with a title, sufficiently indicating the subject-matter of the invention.
  - (2) A provisional specification must fairly describe the nature of the invention.
- (3) A complete specification must fully describe and ascertain the invention and the manner in which it is to be performed, and must end with a distinct statement of the invention claimed.
- (4) Drawings shall accompany every specification if and whenever required by the registrar, and these shall be deemed part of the specification; but if the drawings which accompany a provisional specification are sufficient for the purposes of the complete specification it shall suffice if the complete specification refers to them.
- (5) If a complete specification does not accompany the application it may be lodged within nine months after the date of the application, or within such further time, not exceeding one month, as the registrar in writing allows after payment of the prescribed fee.
  - (6) If a complete specification is not lodged the application shall lapse.

# Duties and Powers of Registrar in Respect of Examination of Applications and Specifications.

- 17. (1) Subject to the provisions of sub-section (3), the registrar shall examine every application and specification to ascertain
  - (a) whether the title has been stated as prescribed;
  - (b) whether the invention has been described as prescribed;
  - (c) whether the application, specification and drawings have been prepared as prescribed.
- (2) In the case of a complete specification lodged after a provisional specification the registrar shall also ascertain whether the invention fully described therein is substantially the same as that which is described in the provisional specification.
- (3) The registrar may, instead of himself undertaking the examination referred to in sub-sections (1) and (2), refer the application and specification



to an examiner to ascertain and report upon the particulars in the said sub-sections enumerated.

Power of Registrar to Refuse to Accept, or Refer for Amendment, Application, Specification or Drawing.

- 18. If, in the case of an application accompanied only by a provisional specification or by a complete specification in the first instance, the decision of the registrar is adverse to the application or specification on any matter referred to in the last preceding section, or if (in case of reference made to an examiner) the examiner report adversely to the registrar in respect of any such matter, the registrar may
  - (a) refuse to accept the application; or
  - (b) require that the application, specification or drawing be amended before he proceeds with the application;

and in the latter case, the application shall, if the registrar so directs, bear date as from the time when the requirement is complied with.

# Appeals from Registrar.

- 19. (1) An appeal shall lie to the law officer from any refusal or direction of the registrar under the last preceding section.
- (2) The law officer shall hear the applicant and the registrar, and shall decide whether and subject to what conditions, if any, the application and specification shall be accepted.

# Refusal to Accept Specification.

- 20. (1) If, in an application accompanied by a provisional specification and followed by a complete specification the registrar finds or (in case of a reference to him) the examiner reports that the complete specification has not been prepared in the prescribed manner, or that the invention is not described as prescribed, the registrar may refuse to accept the complete specification until it has been amended to his satisfaction.
- (2) If, in such an application, the registrar finds or the examiner reports that the invention particularly described in the complete specification is not substantially the same as that described in the provisional specification the registrar may
  - (a) refuse to accept the complete specification until it has been amended to his satisfaction; or
- (b) (with the consent of the applicant) cancel the provisional specification and direct that the application be treated as having been made on the date on which the complete specification was left, and thereupon the application shall have effect as if made on that date.
- (3) If, in such an application, the registrar finds or the examiner reports that the complete specification includes an invention not included in the provisional specification, the registrar may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left.

#### Appeal Against Refusal.

21. A refusal of the registrar to accept a complete specification shall be subject to appeal to the law officer, who shall hear the applicant and the registrar

and may make an order determining whether, and subject to what conditions, if any, the complete specification shall be accepted.

### Lapsing of Application.

22. Unless a complete specification is accepted within twelve months from the date of application or such further time not exceeding three months as may, on payment of the prescribed fee, be allowed by the registrar then, save in the case of an appeal having been lodged against the refusal to accept, the application shall lapse.

### Notice and Advertisement of Acceptance.

- 23. (1) When an application and specification have been accepted the registrar shall give written notice of that fact to the applicant, and shall transmit one of the specifications to the Attorney-General at Cape Town, Pietermaritzburg and Bloemfontein.
- (2) The acceptance of the complete specification shall be advertised in the prescribed manner, and if the acceptance is not advertised within the prescribed period or within such further time as the registrar may allow the application shall lapse.

# Public Inspection of Applications.

24. The application for a patent and the specifications and drawings (if any) connected therewith shall be open to public inspection in the office of the registrar and in the office of the Attorney-General at Cape Town, Pietermaritzburg and Bloemfontein after the first advertisement of the acceptance of the complete specification, but not before.

#### Provisional Protection.

- 25. (1) After an application for a patent has been accepted, the invention may, during the period between the date of the application and date of sealing the patent, be used and published without prejudice to the validity of any patent to be granted on the application, and such protection is, in this Act, referred to as provisional protection.
- (2) After the acceptance of a complete specification, and until the date of sealing the patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

# Privilege as to Reports of Examiners.

- 26. Reports of examiners shall in no case
  - (a) be published; or
- (b) be open to inspection except by the applicant in the event of the report being adverse to him or
- (c) be liable to be inspected or produced in any legal proceedings unless the court having power to order inspection or production certifies that such inspection or production is desirable in the interests of justice and ought to be allowed.



# (b) Opposition.

### Notice of Opposition and Grounds Thereof.

- 27. (1) Any person may, within two months after the last advertisement of the acceptance of a complete specification or within such further time as the registrar may allow, give notice in the prescribed form at the patent office of opposition to the grant of the patent on any of the following grounds, but on no other:
  - (a) That the applicant has obtained the invention from the person giving such notice (hereinafter referred to as the objector), or from a person of whom the objector is the legal representative or assignee;
  - (b) that the invention has been fraudulently obtained to the prejudice of another's rights;
  - (c) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the objector in the interval between the leaving of the provisional specification and the leaving of the complete specification;
  - (d) that the invention is not novel, or is not capable of being patented in terms of the definition of invention in section six;
    - (e) that the person represented as being the inventor is not such;
  - (f) that the invention or the application of the same is contrary to law, public order or good morals;
  - (g) that the complete specification does not sufficiently disclose or explain the invention or the manner in which it is to be performed.
- (2) The notice shall be in duplicate, shall specify the grounds relied on by the objector, shall state an address for service within the Union and shall be in the prescribed form.
- (3) The notice shall also specify full particulars of the grounds on which the objector relies and, if one of those grounds is want of novelty, the particulars of that ground of objection shall, in the case of an alleged prior printed publication, include the title and, if possible, the edition, place and date of publication or compilation thereof and shall also include material reference to the pages thereof. Except by leave of the court no evidence shall be admitted in proof of any ground, particulars whereof are not so specified.

# Rights of Inventor not Prejudiced by Publication.

- 28. The exhibition of an invention at an international or industrial exhibition, certified as such by the Minister or the publication of a description of the invention during the time of any such exhibition, or the use of the invention for the purposes of the exhibition at the place where it is held, or the use of the invention during the time of the exhibition at another place by someone not authorized thereto by the inventor, shall not prejudice the right of the inventor to apply for or obtain a patent for his invention, or the validity of any patent granted on the application: Provided that
  - (a) the exhibitor previous to exhibiting his invention informs the registrar in the prescribed manner of his intention so to do; and
  - (b) the application for a patent is made within six months from the opening of the exhibition.

Prior Publication not to Invalidate or to be a Ground for Refusing Patent.

29. A patent shall not be refused or held to be invalid by reason only of the invention in respect of which the patent is applied for or was granted, or any part thereof, having been published prior to the date of the application for the patent, if the applicant or patentee (as the case may be) proves that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

# Opposed Applications to be Heard and Determined by Judge.

30. Every opposition to the grant of a patent shall be heard and determined by a judge of the provincial division which has jurisdiction at the place named in the application as the applicant's address for service. If it be made to appear to him that the matter may be more conveniently or fitly heard and determined in another division of the Supreme Court, such judge may order the matter to be removed to such other division and thereupon a judge of such other division shall hear and determine the matter.

Registrar of Patents to Transmit Duplicate of Notice of Opposition to Applicant and Transmit Documents to the Registrar of the Court.

31. The registrar of patents shall transmit a duplicate of the notice of opposition to the applicant and shall forthwith transmit to the registrar of the court all documents relating to the application and to the opposition thereto.

# Duty of the Registrar of the Court.

32. The registrar of the court shall give notice to the applicant and to every objector of the place where and the date and hour when the application and the objections thereto will be heard.

# Security for Costs.

33. If an objector or the applicant is residing outside the Union or has no fixed property therein, the applicant or an objector may, prior to the hearing of the objection or of the application (as the case may be) apply to the judge for an order that security to the satisfaction of the judge be lodged or given by the objector or applicant (as the case may be) for the costs of the application or objection. Until such security has been lodged or given the objection or application shall not be heard.

Mode of Hearing and Determination of Applications and Objections by the Court.

- 34. (1) At the time and place notified by the registrar of the court, the judge shall, subject to the provisions of the last preceding section as to security for costs, hear the applicant and any objectors to the application, and such evidence as may be tendered by any of them and the judge shall determine whether and in what form the application shall be granted.
- (2) The application and notice of opposition, together with the documents transmitted therewith to the registrar of the court shall be treated in proceedings under this section as if they were pleadings in a civil action before the provincial division and for the purpose of hearing and determining the matter before it the judge shall have all such powers and jurisdictions as are possessed by a judge



sitting alone in the provincial division to try civil actions, and may further call in the assistance of experts and other persons and may decide what remuneration (if any) shall be paid to them for their assistance by the applicant or any objector.

- (3) Any judgment, decree, or order made in proceedings under this section shall be subject to appeal to the appellate division in the same manner and on the same conditions as a judgment, decree or order of a judge in a civil action; but the provisions of the last preceding section as to security for costs shall mutatis mutandis apply in respect of the appeal.
- (4) The Chief Justice and judges of the Supreme Court may make rules concerning matters relating to practice and procedure on opposition to the grant of a patent.

# Notification of Decision to Registrar.

35. As soon as it has been determined whether the application shall be granted or not, the registrar of the court shall notify to the registrar of patents the judgment, decree or order made upon the application.

# (c) Patents and their Sealing.

# Form and Sealing of Patent, and Date of Sealing.

- 36. (1) If there is no opposition, or, in case of opposition, if the final determination is in favour of the grant of a patent, a patent as nearly as possible in the form set out in the First Schedule to this Act shall, on payment of the prescribed fee, be granted to the applicant, or, in the case of a joint application, to the applicants jointly, and the registrar shall cause the patent to be sealed with the seal of the patent office.
- (2) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application: Provided that
  - (a) where the registrar has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent;
  - (b) where the sealing is delayed by an appeal to the law officer or by opposition to the grant of the patent, the patent may be sealed at such time as the registrar may determine;
  - (c) where the patent is to be granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;
  - (d) where, in consequence of the neglect or failure of the applicant to pay any fee, a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended for such further time as may be prescribed, and this provision shall, in such cases as may be prescribed and subject to the prescribed conditions, apply where the period allowed for the sealing of the patent has expired before the commencement of this Act.
- (3) Subject to the provisions of this Act, every patent shall be dated and sealed as of the date of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the acceptance of the complete specification.



### Patent may not be Granted for more than one Invention.

37. A patent shall be granted for one invention only, but the complete specification may contain more than one claim; and it shall not be competent for any person in an action or other proceedings to take any objection to a patent on the ground that it comprises more than one invention.

#### Duration of Patent.

- 38. (1) The term limited in every patent for the duration thereof, shall, save as otherwise provided by this Act, be fourteen years from its date.
- (2) Every patent shall cease if the patentee fails to pay the prescribed fees within the prescribed times: Provided that the registrar, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to an extent specified in an application made for the purpose, not exceeding three months.
- (3) If any proceeding is taken in respect of any infringement of the patent, committed after the failure to pay any fee within the prescribed time, and before any enlargement thereof, the court may, if it thinks fit, refuse to award any damages in respect of such infringement.

# Differences Between Provisional and Complete Specifications not to Invalidate Patent.

39. A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention from that contained in the provisional specification, if the invention therein claimed, so far as it is not contained in the provisional specification, was novel at the date when the complete specification was put in, and the applicant was the inventor thereof, or the assignee or legal representative of the inventor, assignee, or assignee of a part interest in the invention.

# Single Patent may be Granted for Cognate Inventions.

- 40. (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate, or modifications one of the other, and has obtained thereby concurrent provisional protection for the same and the registrar is of opinion that the whole of those inventions are such as to constitute a single invention, and may properly be included in the patent, he may accept one complete specification in respect of the whole of such applications, and grant a single patent thereon.
- (2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same, and for the purpose of the provisions of this Chapter relating to oppositions to the grant of patents, the court shall have regard to the respective dates of the provisional specifications relating to the several matters claimed or included therein.

# Patents not Invalidated by Certain Circumstances.

- 41. (1) A patent granted to the inventor or his assignee or legal representative, shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.
- (2) The grant of a patent or similar exclusive privilege for an invention to the inventor or his assignee or legal representative in a country outside the Union, whether a British possession or not, shall not be a bar to the grant of a patent for the same invention or any part thereof in the Union to the same person:



Provided that the application for the grant of an Union patent shall be made within twelve months of the date of the lodging of the application for such foreign patent or similar exclusive privilege.

(3) The publication in print in the Union or any other country, or the use in the Union during the period referred to in the preceding sub-section, of the invention shall not invalidate the patent which may be granted for the invention in the Union.

# Effect of a Patent.

42. The effect of a patent shall be to grant to the patentee, subject to the provisions of this Act and the conditions of the patent, full power, sole privilege and authority, by himself, his agents, and licencees during the term of the patent to make, use, exercise and vend the invention within the Union in such manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent.

# Patent Effective Throughout Union.

43. Every patent when sealed shall have effect throughout the Union, unless any Province be excepted therefrom, in which case it shall not apply to such excepted Province.

#### Assignment and Devolution of Patents.

44. The rights granted to a patentee by a patent are capable of assignment and of devolution by operation of law.

#### Transfer of Patent.

45. A patentee may, in the prescribed manner, assign his patent to any other person, either wholly or in part, and he may similarly assign it for any place in or for any part of the Union as effectually as if the patent had been granted only for such place in or such part of the Union. But no such assignment shall be of any force or effect unless registered at the patent office.

#### Issue of Duplicate Patent in Case of Loss or Destruction of Patent.

46. If a patent is lost or destroyed or its non-production is accounted for to the satisfaction of the registrar, he may at any time cause a duplicate thereof to be sealed and issued on such terms and subject to the payment of such fees as may be prescribed.

# (d) Amendment of Specification.

Manner of Obtaining Amendment of Specifications and Conditions on which the Same may be Allowed.

- 47. (1) An applicant or a patentee may by request in writing left at the patent office seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction or explanation stating the nature of the amendment and the reasons for it. Where two or more persons are jointly entitled to the benefit of a patent the request shall be made by those persons or by some or one of them with the written consent of the others.
- (2) The request and the nature of such proposed amendment shall be advertised in the prescribed form and manner, and, at any time within three months from its first advertisement, any person may give notice, at the patent office, of opposition to the amendment.
  - (3) Where such notice is given, the registrar shall give notice of the opposi-



tion to the person making the request and shall hear and decide the case, subject to an appeal to the law officer.

- (4) The law officer shall, if required, hear the person making the request and the person so giving notice, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.
- (5) When no notice of opposition is given, or the person so giving notice does not appear, the registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.
- (6) When leave to amend is refused by the registrar, the person making the request may appeal from the decision to the law officer.
- (7) The law officer shall, if required, hear the person making the request and the registrar, and make an order determining whether and subject to what conditions, if any, the amendment ought to be allowed.
- (8) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before the amendment.
- (9) Leave to amend shall be conclusive as to the rights of the party to make the amendment allowed except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.
- (10) The provisions of this section shall not apply when and so long as any action for infringement, or any proceeding for revocation of a patent, is pending.

# Jurisdiction of Court to Allow Amendment of Specification in an Action for Infringement.

- 48. (1) In any action for infringement of a patent and in a proceeding for the revocation of a patent the court may, by order allow the patentee, subject to such terms as to costs, advertisement or otherwise as the court may impose, to amend his specification by way of disclaimer: Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially different from the invention claimed by the specification as it stood before amendment; and where an application for such an order is made to the court notice of the application shall be given to the registrar, and the registrar shall have the right to appear and be heard.
- (2) Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction or explanation, unless the patentee establishes to the satisfaction of the court that his original claim was framed in good faith and with reasonable skill and knowledge.

# Advertisement of Amendment of Specification.

49. Every amendment of a specification shall be advertised in manner directed by the registrar.

# (e) Extension of Patents.

# Mode of Obtaining Extension of Patent.

50. (1) A patentee may, after advertising in manner directed by rule or order of the court his intention so to do, present a petition to the court that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.



- (2) Any person may give written notice to the registrar of the court, objecting to the extension.
- (3) The court may hear the petition and the petitioner and any person who has given such notice of objection. The registrar of patents shall also be entitled to appear and be heard.

### Grounds on which and Period for which Extension may be Granted.

- 51. (1) The court shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public and to the profits made by the patentee as such and to all the circumstances of the case.
- (2) The court, if it is of opinion that the patentee has been inadequately remunerated by his patent, may order the extension of the term of the patent for a further term not exceeding seven, or in exceptional cass, fourteen years, or order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions and provisions that the court may think fit.

# (f) Patents of Addition.

### Mode of Obtaining Patent of Addition and Duration Thereof.

- 52. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.
- (2) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.
- (3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.
- (4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

# (g) Restoration of Lapsed Patent.

# Application for Restoration of Patent.

- 53. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the registrar in the prescribed manner for an order for the restoration of the patent.
- (2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.
- (3) If it appear from the statement that the omission was unintentional, and that no undue delay has occurred in the making of the application, the registrar shall advertise the application in the prescribed manner, and within such time as may be prescribed, any person may give notice of opposition at the patent office.

#### Opposition to Application.

54. (1) Where such notice of opposition is given the registrar shall inform the applicant thereof, and shall forthwith transmit to the registrar of the court the documents relating to the application and to the opposition thereto.

- (2) After the expiration of the prescribed period the court shall hear the case, and (subject to an appeal to the appellate division) issue an order either restoring the patent or dismissing the application: Provided that in every order made under this section, restoring a patent, such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been duly announced and published as void.
- (3) The provisions of sections thirty to thirty-five inclusive shall mutatis mutandis apply in respect of the hearing and determination of opposed applications for the restoration of a patent.

# (h) Revocation of Patent.

# Grounds of, and Persons Entitled to Petition for, Revocation of Patent.

- 55. (1) Application for revocation of a patent may be made by petition to the court, upon any one or more of the grounds on which the grant of the patent might have been opposed.
  - (2) Such petition may be presented by the following persons, and no other:
    - (a) The Minister of Justice or any person authorized by him;
  - (b) any person who alleges that the patent has been obtained in fraud of his rights or of the rights of any person under or through whom he claims;
  - (c) any person who alleges that he, or any person under or through whom he claims, was the inventor of any invention included in the claim of the patentee;
  - (d) any person who alleges that he or any person under or through whom he claims an interest in any trade, business, or manufacture has publicly manufactured, used or sold within the Union before the date of the patent anything claimed by the patentee as his invention.

#### Particulars to Accompany Petition for Revocation.

- 56. (1) The petitioner must deliver with his petition particulars of the objections on which he means to rely, and if one of such objections is want of novelty he must state the time and place of the previous publication or user alleged by him, with the particulars required in sub-section (3) of section twenty-seven. No evidence shall, except by leave of the court, be admitted in proof of any objection of which particulars are not so delivered.
- (2) Particulars delivered may be from time to time amended by leave of the court.
- (3) The defendant shall have the right to begin and give evidence in support of his patent and if the petitioner produces evidence against the validity of the patent the defendant shall be allowed to bring rebutting evidence.
- (4) The court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case; and any remuneration of such assessor fixed by the court shall be included in the costs of the case and may be dealt with at the discretion of the court as part of such costs.

#### Grant of Patent to Inventor where Patent Revoked on Grounds of Fraud.

57. Where a patent is revoked on the ground of fraud, or where a patent fraudulently obtained has been surrendered and revoked, the registrar may, on the application of the inventor, his assignee or legal representative, made in accordance with the provisions of this Chapter, grant to him a patent in lieu of and bearing the same date as the patent so revoked: Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

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# Revocation of Patent on Surrender by Patentee.

- 58. (1) A patentee may at any time, by giving notice in the prescribed manner to the registrar, offer to surrender his patent, and the registrar may, if, after giving notice of the offer and hearing all parties who desire to be heard, he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.
- (2) Where an action for infringement or a proceeding for the revocation of the patent is pending in any court, the registrar shall not accept the offer for the surrender, or make an order for the revocation of the patent, except by leave of the court, or by consent of the parties to the action or proceeding.
- (3) In the case of a patent granted under section eight, the patentee may offer to surrender his patent to the extent of its application to any particular Province other than that in which the provincial patent was granted, and the registrar may in his discretion, after giving notice of the offer and hearing all parties who desire to be heard, accept the offer and shall thereupon endorse the patent accordingly. The endorsement shall have the effect of excepting the particular Province aforesaid from the patent.
- (4) Any decision of the registrar under this section shall be subject to appeal to the court.

#### PART IV .- WORKING OF PATENTS AND COMPULSORY LICENCES.

### Grounds on which Compulsory Licences Granted or Patent Revoked.

- 59. (1) Any person interested may, after the expiration of two years from the granting of the patent, present a petition to the registrar alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory licence or in the alternative for the revocation of the patent.
- (2) The registrar shall consider the petition and if the parties do not come to an arrangement between themselves the registrar, if satisfed that a *prima facie* case has been made out, shall refer the petition to the court, and, if the registrar is not so satisfied, he may dismiss the petition.
- (3) Where any such petition is referred by the registrar to the court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by rule or order to grant licences on such terms as the court thinks just or if the court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences the court may order the revocation of the patent: Provided that no order of revocation shall be made before the expiration of three years from the date of the patent or if the patentee gives satisfactory reasons for his default.
- (4) On the hearing of any petition under this section the patentee and any person claiming an interest in the patent, as exclusive licensee or otherwise, shall be made parties to the proceedings, and the rgistrar shall be entitled to appear and be heard.
- (5) For the purposes of this section, the reasonable requirements of the public shall not be deemed to have been satisfied—
  - (a) if, by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent, or to grant licences on reasonable

terms, any existing trade or industry or the establishment of any new trade or industry in the Union is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

- (b) if any trade or industry in the Union is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this Chapter, to purchase, hire, or use of the patented article, or to the using or working of the patented process.
- (6) An order of the court directing the grant of any licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence, and made between the parties to the proceeding.

Invalidity of Prohibitive or Restrictive Conditions in Contracts as to Patented
Processes and Articles.

- 60. (1) It shall not be lawful in any contract made after the commencement of this Chapter in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—
  - (a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor or licensor or his nominees; or
  - (b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy: Provided that this sub-section shall not apply if—

- (i) the seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid; and
- (ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract as may be fixed by an arbitrator appointed by the Minister.
- (2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the commencement of this Chapter, may, at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given determining any contract made before the commencement of this Chapter, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.
- (3) Any contract made before the commencement of this Chapter relating to the lease of or license to use or work any patented article or process and containing any condition which, had the contract been made after the commencement of this Chapter, would by virtue of this section have been null and void



may, at any time before the contract is determinable under the last preceding sub-section, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.

- (4) The insertion by the patentee in a contract made after the commencement of this Chapter, of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent, to which the contract relates brought while that contract is in force.
  - (5) Nothing in this section shall-
  - (a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person;
  - (b) be construed as validating any contract which would, apart from this section, be invalid; or
  - (c) affect any right of determining a contract or condition in a contract exercisable independently of this section; or
  - (d) affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

#### PART V.—INFRINGEMENT OF PATENTS.

## Grounds Disentitling Patentee to Recover Damages.

61. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Chapter from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent: Provided that nothing in this section shall affect any proceedings for an interdict.

Procedure and Provisions to be Applied in Action for Infringement.

- 62. In an action for infringement of a patent the following provisions shall apply:
  - (a) Any ground upon which a patent may be revoked under this Act may be applied by way of defence.
  - (b) The defendant, if entitled to present a petition to the court for the revocation of the patent, may, without presenting such a petition, apply in accordance with the rules of court by way of counterclaim in the action for the revocation of the patent.
  - (c) The plaintiff must deliver with his declaration or by order of the court at any subsequent time particulars of the infringement complained of.
  - (d) The defendant must deliver with his statement of defence or by order of the court at any subsequent time particulars of any objections on which he relies in support thereof.
  - (e) If the defendant disputes the validity of the patent the particulars delivered by him must state the grounds on which he disputes it, and if one

of those grounds is want of novelty must state the time and place of the previous publications or user alleged by him, with the particulars required in sub-section (3) of section twenty-seven.

- (f) At the hearing no evidence shall, except by leave of the court, be admitted of which particulars have not been so delivered.
- (g) Particulars delivered may from time to time be amended by leave of the court.

## Summoning of Assessors to Assist the Court.

63. In any action for infringement of a patent the court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case, upon the terms as to remuneration already specified in sub-section (4) of section fifty-six.

Jurisdiction of the Court in Actions for Infringement.

64. In any action for infringement-

- (a) if the complete specification contains two or more claims, the invalidity of any one claim shall not, unless it is otherwise determined by the court, affect the validity of any other claim or the validity of the patent in so far as it relates to any valid claim;
- (b) the court may, if it is of opinion that any claim in the complete specification is invalid, order the plaintiff to pay the defendant the whole or such part of the costs of the action as it thinks just, notwithstanding that the patent is held to be valid so far as it relates to any other claim, and order the patentee to amend his specification by way of disclaimer and subject to such terms and conditions as are or may be imposed by section forty-eight;
- (c) the court may certify that the validity of the patent came in question; and if the court so certifies then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between attorney and client, unless the court trying the action certifies that he ought not to have the same;
- (d) the court may, on the application of either party, make such order for an interdict, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the court may see fit.

Action and Interdict Arising from Threat of Legal Proceedings.

65. Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person grieved thereby may bring an action against him, and may obtain an interdict against the continuance of such threat, and may recover such damages (if any), as he has sustained thereby, if the alleged infringement, to which the threat related, was not in fact an infringement of any legal rights of the person making the threats: Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of his patent.

PART VI.—RIGHTS OF THE CROWN IN RESPECT OF PATENTS.

Crown to be Bound by Grant of Patent.

'66. A patent shall to all intents have the like effect against the King as it has against a subject: Provided that a Minister may use the invention for the

public service on such terms as are agreed upon with the patentee or in default of agreement on such terms as are settled by arbitration.

# Acquisition of Patent by the Government.

- 67. (1) The Governor-General, if thereto authorized by resolution of both Houses of Parliament, may direct that any patent shall be acquired by the Minister from the patentee.
- (2) The Governor-General may thereupon, by proclamation in the Gazette, declare that the patent has been acquired by the Minister, and upon the publication of such proclamation or on any date specified therein, the patent and all rights of the patentee thereunder shall by virtue of this Act be transferred to and vested in the Minister on behalf of the Union Government.
- (3) The Government shall pay to the patentee such reasonable compensation as is agreed upon or as is, in default of agreement, settled by arbitration.

## Assignment of Certain Patents to the Government.

- 68. (1) The inventor of any improvement in instruments or munitions of war may assign the invention and the patent obtained or to be obtained for the invention to the Union Government.
- (2) The assignment and all covenants and agreements therein contained shall be valid and effectual and may be enforced by action or other appropriate proceeding in the name of the Minister.
- (3) Where an invention has been assigned to the Government the Minister of Defence may, by notice in writing to the registrar, direct that the invention and the manner in which it is to be performed shall be kept secret.
- (4) Every application, specification, amendment of specification or drawing received at the patent office relating to any invention in respect of which such notice has been given shall be sealed up by the registrar and the contents of such application, specification, drawing or document shall not be divulged without the written permission of the Minister of Defence.
- (5) Letters patent for the invention may be made out in the name of the inventor and sealed, but such letters patent shall be delivered to the Minister of Defence and not to the inventor and shall be the property of the Government, and no proceeding shall lie for the revocation of the patent.
- (6) The communication of an invention to the Minister of Defence or to any person authorized by him to investigate the invention shall not, nor shall anything done for the purpose of the investigation by such person, be deemed publication or use of the invention so as to prejudice the grant or validity of any patent for the invention.
- (7) The Minister of Defence may by notice in writing to the registrar direct that any invention directed to be kept secret need no longer be kept secret, and thereupon the specification and drawings may be published.

#### PART VII.—PATENT AGENTS.

## Registration of Patent Agents.

69. (1) Any person resident in the Union on passing the prescribed examination and on paying to the registrar a fee of five pounds may be registered by him as a patent agent: Provided that a person who has been an officer in the patent office shall not be registered as a patent agent until at least twelve months have expired since he ceased to be such an officer.



- (2) The name of any person registered as a patent agent may be removed from the register in the prescribed manner and on the prescribed grounds.
- (3) Any person who proves to the satisfaction of the registrar that he was at the commencement of this Chapter bona fide practising as a patent agent in any part of the Union, and has been so practising for twelve months prior to such commencement, may, on complying with the prescribed conditions, be registered as a patent agent without passing the prescribed examination.
- (4) Any person duly registered as a patent agent in any Province at the commencement of this Chapter may be registered as a patent agent without payment of any fee.

## Attorneys May Practise as Patent Agents.

70. Every person entitled to practise as an attorney within any Province may practise as a patent agent and exercise such functions as are described in the next succeeding section without passing the prescribed examination and without being registered as a patent agent, but shall not be entitled to be registered as a patent agent except as prescribed by the last preceding section.

#### Functions of Patent Agent.

71. A registered patent agent may sign and make all communications between an applicant and the registrar and may represent an applicant at all attendances before the registrar or the law officer and shall have such other privileges as may be prescribed.

# PART VIII.—MISCELLANEOUS PROVISIONS. Fees.

- 72. (1) There shall be paid to the registrar in respect of the several matters set out in the Second Schedule to this Act the fees therein specified; and there shall be paid to him, in respect of other matters under this Chapter or the regulations, such fees as are prescribed.
- (2) The Governor-General may, by proclamation in the Gazette, reduce the fees specified in the said Second Schedule.

# User of Patents Granted to Two or More Persons Jointly.

73. Where, under this Act, a patent is granted to two or more persons jointly, each of such persons shall (subject to any contract to the contrary) be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent; and if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his estate.

# Patents for Inventions Use Whereof Contrary to Law, etc., Not to Be Granted.

74. The registrar may refuse to grant a patent for an invention the use whereof would, in his opinion, be contrary to law or morality, but any person aggrieved by such refusal may appeal therefrom to the court, and the court may make an order determining whether, and subject to what conditions (if any) the grant may be made.

# Use of Inventions for Navigation or Working of Ships Notwithstanding Invention Patented.

75. (1) A patent shall not prevent the use, within the territorial waters of the Union, of an invention for the purpose of navigation or working of a British ship registered at a port or place outside the Union, or of a foreign ship, or the use of an invention in any such vessel within those waters: Provided it is not

used therein for, or in connection with, the manufacture or preparation of anything intended to be sold in or exported from the Union.

(2) This section shall not extend to vessels of any British possession or foreign state of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that possession or state, or in the waters within the jurisdiction of its courts.

Note: In the July issue of the Review it is our intention to publish Chap. V, "General and Supplementary Provisions," being Arts. 141-195 of the Act.

# United States.

Patents. Reissue Applications. Rule 75. Oath. Order No. 2,255, of May 18, 1915.

227 O. G., I.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,

Washington, D. C., May 18, 1916.

The oaths of reissue applications (Rules 46 and 87) and oaths under Rule 75 hereafter filed shall be submitted to a Law Examiner. His conclusion on the question of their sufficiency shall be binding on the Primary Examiner.

(Signed) THOMAS EWING,

Commissioner.

# Patent Office. Branch at Panama-Pacific Exposition. Form of Letters Patent under "Kahn Act."

As a matter of interest we reproduce from 227 Official Gazette, 368, Certificate of Proprietorship No. 2 granted under the "Kahn Act" at the Branch United States Patent Office at the Panama-Pacific International Exposition. This is "the first application . . . in which the Patent Office was interested" (see 14 P. & T. M. Rev., 60), No. 1 being concerned with copyrights:

[No. 2.]

Branch Registration Office,
United States Patent Office,
Panama-Pacific International Exposition,

San Francisco, Cal., December 2, 1915.

CERTIFICATE OF PROPRIETORSHIP.

This certifies that Linotype & Machinery, Limited, of London, England, has presented satisfactory proof showing it to be the proprietor of Letters Patent of the Kingdom of Spain, No. 22,989, dated September 17, 1898, for improvements in machinery for the manufacture of printing-type in the form of printing-bars, and No. 23,129, dated October 12, 1898, being an addition to Patent No. 22,989, and of Letters Patent of the United Kingdom of Great Britain and Ireland, No. 3,617, dated February 16, 1903, for improvements in linotype-machines; No. 26,355, dated November 12, 1910, for improvements in typographical line-casting machines; No. 6,483, dated March 15, 1912, for improvements in apparatus for separating individual components from a series and successively delivering them to other apparatus, and No 17,990, dated August 3, 1912, for improvements in or relating to the metalpots of typographical casting-machines. The type-casting and accessory machinery

claimed to be covered by the above-specified Letters Patent has been imported by the said Linotype & Machinery, Limited, for exhibition at the Panama-Pacific International Exposition, San Francisco, 1915, and installed in the Palace of Manufactures. This certificate is issued by the United States Patent Office in accordance with the provisions of the act of Congress approved September 18, 1913. (H. R. 7595, Pub. No. 14.) \*

Date of admission and installation of exhibit in the Palace of Manufactures, April 11, 1915.

(Signed) WILLIAM OSBORN,

In charge Branch Registration Office, San Francisco, Cal.

Approved:

THOMAS EWING,

Commissioner of Patents.

\* For text see 12 P. & T. M. Rev., 25.

# United States Practice.

## Trade Marks.

226 O. G., 1799.

Court of Appeals of the District of Columbia.

THE CANTON CULVERT AND SILO COMPANY V. CONSOLIDATED CAR-HEATING COMPANY.

Decided March 6, 1916.

I. TRADE-MARK-OPPOSITION-SIMILARITY OF GOODS.

"Nokoro" for electrical resistance, electrical apparatus, etc., *Held* to conflict with "No-Co-Ro," used by the opposer on sheet metal, said to be adapted for electrical apparatus, and particularly for resistances.

2. SAME—Appropriation of Another's Mark for Similar Goods.

Where there appears a manifest attempt to appropriate the benefits of another's mark the court will not indulge in refinements.

Mr. Harry Frease for the appellant.

Mr. Wm. S. Hodges for the appellee.

**Robb**, J.:

This appeal is from a decision of an Assistant Commissioner of Patents dismissing appellant's opposition to the registration by the appellee of the word "Nokoro" as a trade-mark for "electrical resistances, electrical apparatus," etc.

In its application for registration appellee alleges that it has used this mark since July 1, 1914. In its notice of opposition appellant alleges that it has used the word "No-Co-Ro" since February, 1909, as a trade-mark in connection with the sale of sheet metal; that this sheet metal—

is adapted to be used as a supply for electrical apparatus and machines, and is particularly adapted to be used for electrical resistances.

The notice contains the usual averments that confusion in trade would be likely to result from the registration of substantially the same mark by appellee. Appellee filed a motion to dismiss this opposition, which motion was granted and this appeal followed.

It of course is not disputed that the two marks are substantially identical. The tribunals of the Patent Office appear to have accepted the contention of appellee that an electrical resistance is an organized apparatus, as a rheostat, and hence that the so-called "raw material" of appellant does not respond to the term. We cannot

accept this view. In the notice of opposition, the averments of which must be accepted as true for the purposes of this appeal, it is stated that appellant's sheet metal—is particularly adapted to be used for electrical resistances.

It is familiar doctrine in this court that the owner of a trade-mark will not be hampered or embarrassed in the legitimate extension of his business by the registration of the mark to another. (In re Braadland, 37 App. D. C., 602; Wolf & Sons. v. Lord & Taylor, 41 App. D. C., 514; Simplex Electric Heating Co. v. Gold Car Heating & Lighting Co., 43 App. D. C., 28; Fishbeck Soap Co. v. Cleano Mfg. Co., 44 App. D. C., —...) Appellant was the first to adopt this mark and has established a trade reputation in connection therewith. There was no legitimate reason or excuse for its adoption by appellee upon this line of goods, and we are not disposed to indulge in refinements where such a manifest appropriation appears.

The decision is reversed and the opposition sustained. Reversed.

# International Union.

Official Journals. Contents.

## LA PROPRIÉTÉ INDUSTRIELLE.

APRIL,

UNOFFICIAL PART. Domestic Legislation: A. Measures taken by REASON OF THE PRESENT STATE OF WAR. GERMANY. I. Ordinance concerning the prolongation of priority delays (April 8, 1916).—II. Notice granting facilities in the domain of patents, gebrauchsmuster, and trade marks (April 13, 1916) .-Applications for relief as to payment of patent taxes; renewal.—Austria. Ordinance concerning the interruption of procedure in the delivery of patents of invention (No. 82, of March 24, 1916).—UNITED STATES. Discontinuance of the procedure tending to delay the allowance of patents.—Great Britain. Suspension of the effects of Sec. 27 of the patents and designs law of 1907 concerns the subjects of all countries.—HUNGARY. I. Publication concerning the prolongation of Union priority terms (No. 12,581/1916, of March 4, 1916).—II. Ordinance prolonging the term established by Sec. 34 of the patent law of 1895 (No. 17,612, of April 9, 1916).—Portugal. Decree amending certain provisions of Decree No. 939 of Oct. 9, 1914, and prolonging the priority terms established by the Convention of Paris (No. 2033, of Nov. 9, 1915).—B. ORDINARY LEGISLATION. NEW ZEALAND. Trade Marks Regulation (of May 21, 1912) (Continuation and end). VENEZUELA. Penal Code of 1915, Arts. 320 to 322.

UNOFFICIAL PART. General Observations: A PROPOSED FRENCH LAW CONCERNING PATENTS OF INVENTION.

Correspondence: Letter from Austria.

Jurisprudence: Austria. Red Cross. Convention of the Union; patents of invention; figurative marks; enemy foreigners.

Miscellaneous News: AUSTRIA. Retirement of Baron Beck de Mannagetta, President of the Patent Office.

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#### Translations

FRENCH — GERMAN — SPANISH — ITALIAN — PORTUGUESE

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**JULY, 1916** 

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# WM. WALLACE WHITE, Proprietor and Publisher Woolworth Building Borough of Manhattan, New York City,

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Edited and Published by

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# Paraguay.

## Trade Marks. Registrations. Statistics Jan., 1902, to Oct. 18, 1915.

Whereas, in most of the countries granting trade mark protection, a decrease in the number of registrations of trade marks effected during 1914 was evident from the statistics published,—a fact undoubtedly attributable to the state of war—the Paraguayan statistics for that year show a considerable increase in the number of registrations effected.

The trade marks registered numbered as follows: Fourteen during 1902; 23 during 1903; 26 during 1904; 38 during 1905; 66 during 1906; 208 during 1907; 197 during 1908; 147 during 1909; 93 during 1910; 179 during 1911; 274 during 1912; 152 during 1913; 336 during 1914, and 115 from January to October 18, 1915.

# Hungary.

# Patents. Proposed New Law.

The journals published in Hungary announce that Dr. Rudolph Schuster, President of the Royal Hungarian Patent Office, has just presented to the Ministry of Commerce the project of a new law covering patents, which this latter has been charged to prepare.

The text of this project is not as yet published. According to reports of the specialists that have been permitted to examine it, it contains welcome innovations which will produce in patent protection a great stride in advance, and which will not fail to exercise their influence on reforms proposed elsewhere than in Hungary. The journals insist on the publication of the plan being made without delay, in order that interested associations be able to express their opinion on the subject and give form to their opposition, if there be such. (Translation from 32 La Propriété Industrielle, 63.)

# Uruguay.

# Trade Marks. Classification (Amending Category 6, Class 52.) Resolution of Oct. 16, 1915.

We are indebted to Messrs. Beare & Co., of Montevideo, for the information that through resolution of Oct. 16, 1915, the word "Botonería" (Buttons) has been suppressed and the word "Bonetería" (Knit Goods) inserted in Class 52 (Category 6) of the Trade Mark Classification of Nov. 20, 1909. The classification as a whole follows that of the old Argentine regulation of June 2, 1903, a translation of which appears in 8 P. & T. M. Rev., 2938. In this translation the word "Bonetería" has been erroneously given as "Bonnets," for which last the words "Knit Goods" should be substituted, making Class 52 read: "Knit goods; gloves, haberdashery, corsets, needles and pins."

#### Cuba.

#### Drugs. Importation and Sale. Proposed Law. Notice.

Dr. Enrique Nuñez, Secretary of the Board of Health, has prepared a decree for issuance by the President of the Republic regulating the imports and sale of habit-forming drugs, the illegal traffic in which has recently caused the closing of a number of drug stores in the Federal Capital. The decree provides that only

lawfully established druggists shall import the following remedies: Opium, morphine, heroin, diorin, peroin, cocain, vocain, trofococain, chucain, estorain, hydrate of chloral, chloroform, sulphuric ether, and cannabis indica. The customs officers of the island at the different ports are required to furnish a detailed statement to the local customs administrator covering each importation of these drugs, and druggists and pharmacists who sell same to consumers must make detailed reports of such transactions to the Department of Public Health. (From Bulletin of the Pan American Union, May, 1916.)

# Great Britain.

Trade Marks. "Horlick's Malted Milk." "Malted Milk." Descriptive.

Passing-off Action Dismissed. Decision of October 27, 1915.

The plaintiffs, the Horlick's Malted Milk Company, manufacturers of a food preparation sold as "Horlick's Malted Milk," brought a passing-off action against the defendant, Summerskill, to restrain him from using the words "Malted Milk" for a food preparation made and sold by him under the name of "Headley's Malted Milk." Plaintiffs claimed that by the expression "Malted Milk" the public understood their food product only and that the words were not descriptive of the goods, because it was not possible to malt milk. The defendant maintained that these words naturally and ordinarily describe in English a food that contains malt and milk, and he adduced evidence that the term "malted" had been applied to other articles containing malt. Mr. Justice Joyce held that "Malted Milk" was a descriptive term that had never lost its original proper descriptive meaning and had never become distinctive, exclusively or otherwise, of the plaintiff's preparation, and that if there were any obligation on the defendant to distinguish his preparation from that of the plaintiffs, he had done so by the prefix of the name "Headley's." (From 33 Reports of Patent, Design and Trade Mark Cases, No. 7, p. 137.)

# Hungary.

Trade Marks. "Austr. Hung." Deceptive. Rejection. Decision.

THE INSCRIPTION "AUSTR. HUNG." IN A MARK ALLOWABLE ONLY IF DEPOSITOR HAS AN ESTABLISHMENT NOT ONLY IN AUSTRIA BUT ALSO IN HUNGARY.

An application for the registration of the mark consisting, in addition to other component parts, of the inscription "Austr. Hung. Cycles" was filed and rejected on the ground that it was deceptive. Applicant filed an appeal and endeavored to justify the use of this description by declaring that it serves for the purpose of distinguishing goods manufactured within the domains of the Austrian-Hungarian Empire from those manufactured within the German Empire. The court held that the mere fact that appellant possesses an establishment in Austria does not entitle him to the use of inscriptions and indications from which a purchaser, not intimately acquainted with the existing commercial circumstances, would draw the conclusion that the goods so marked have been manufactured within the territory of the Hungarian Crown, and, furthermore, that the very fact that the appellant has only an establishment in Austria and none in Hungary is a good reason for presuming that the abbreviation of the word "Hung," was adapted to deceive the purchasing public in respect of the origin of the goods. (Reported in Oesterreichisches Patentblatt, Nov. 1915.)

# Sweden.

Patents. Foreign Holders. Taxes. Moratorium. Extension of Term.
Ordinance Effective July 1, 1916.

(Translation.)

PAYMENT OF ANNUITIES IN SWEDEN.

ROYAL ORDONNANCE CONCERNING A DELAY FOR PAYING CERTAIN ANNUITIES.\*

The Royal Palace of Stockholm, June 17th, 1916.

We Gustaf, etc.

To patentees, living outside Sweden, is granted, in cases when the time for paying such an annuity with fine, as mentioned in Section 11 of the Patent Law of May 16th, 1884, expires during the period July 1st-Dec. 31st, 1916, a delay of three calendar months counted from the day, when the annuity ultimately should have been paid, according to the said section.

This ordonnance shall come into force on the 1st day of July, 1916. All persons concerned, etc.

(Signed.)

(Translation by The Society of Swedish Patent Agents.)

#### France.

Designs. Models. Fees. Law (Amendatory of Art. 8, § 1, of Law of July 14, 1909),\* of Jan. 6, 1916.

(Translation.)

LAW AMENDING ART. 8, § 1, OF THE LAW OF JULY 14, 1909, CONCERNING DESIGNS AND MODELS.

Sole Article. The indemnity of three francs ninety-five centimes (3 fr. 95) for the deposit and the fee of five centimes (0 fr. 05) for the object deposited whereof the collection is authorized by Art. 8, § 1, of the Law of July 14, 1909,\* concerning designs and models, shall be apportioned as follows:

- I. To the Commune of the locality of the prud'hommes or to the Clerk of the Tribunal of Commerce, an apportionment of fifty centimes (o fr. 50), plus the fee of five centimes (o fr. 05) for the object deposited;
- 2. To the Secretary of the Council of prud'hommes or to the Clerk of the Tribunal, an indemnity of two francs twenty-five centimes (2 fr. 25), there being included the allowance provided for by Art. 58 of the Law of March 27, 1907;
- 3. The sum of one franc twenty centimes (1 fr. 20) for the expenses of the registration stamp of the declarations and transcripts of deposit and of the certificate of deposit.

The present law, discussed and adopted by the Senate and by the Chamber of Deputies, shall be executed as the law of the State.

Done at Paris, Jan. 6, 1916.

(Signed) R. Poincaré.



<sup>\*</sup> Replacing ordinance of Dec. 17, 1915, for which see 14 P. & T. M. Rev., 131.

<sup>\*</sup> For text see 8 P. & T. M. Rev., 2020.

By the President of the Republic;

CLÉMENTEL.

- Minister of Commerce, Industry, Posts and Telegraphs.

RENÉ VIVIANI,

Custodian of the Seals, Minister of Justice.

Note: This law was promulgated Jan. 11, 1916, in the Journal Oficiel. (From 32 La Propriété Industrielle, 56.)

# New York (United States).

Trade Names. Unfair Trade. Act (Amendatory) of April 28, 1915. Effective Sept. 1, 1915.

(CHAP. 446, L., 1915.)

AN ACT TO AMEND THE PENAL LAW, IN RELATION TO CONDUCTING BUSINESS UNDER AN ASSUMED NAME. (Became a law April 28, 1915, with the approval of the Governor. Passed, three-fifths being present.)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section four hundred and forty of the penal law is hereby amended to read as follows:

1. No person or persons shall hereafter carry on or conduct or transact business in this state under any assumed name or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting, or intending to conduct said business. No person or persons shall hereafter use, or file a certificate for the use of, any family name or names or colorable simulation thereof to carry on or conduct or transact business in this state unless the name, or one of the names, so used or intended to be used is the true or real name of the person or of one of the persons conducting or intending to conduct said business, or said person or persons are successors in interest to the person or persons theretofore using such name or names to carry on or conduct or transact business, in which case the certificate filed shall so state.

§2. This act shall take effect September first, nineteen hundred and fifteen.

# Argentine Republic.

Trade Marks. "Garfield Tea." Infringement. Guilty Knowledge Requisite.

Decision.

FALSIFICATION OF A MARK; A MATTER OF FALSIFICATION THAT AMOUNTS TO THE EXACT COPYING OF THE ORIGINAL, AND NOT OF IMITATION WHEREIN THE ESSENTIAL ELEMENTS OF A MARK ARE TAKEN, AMOUNTING TO CERTAIN DIFFERENCES, THE FACT EVIDENCED BY THE COURT THAT AT MERE SIGHT THE

ILLEGAL MARK IS ALMOST IDENTICAL WITH THE LEGITIMATE ONE, IS SUF-FICIENT FOR RELIEVING THE PREPARATION FROM PUNISHMENT. MUST SHOW THE GUILT AND GUILTY KNOWLEDGE OF THE ACCUSED. QUITTAL.

Garfield Tea Co. v. Ricardo Durañona.

Buenos Aires, Feb. 23, 1916.

Decision of the Federal Court.

In view of the evidence and considering:

- I. That the Corporation, Garfield Tea Co., makes complaint against Mr. Ricardo G. Durañona for falsification and usurpation of a trade mark and prays that he be condemned to the maximum penalty that Art. 48 of Law 3975 provides;
- 2. That the motive for the complaint is the fact that the accused had in his pharmacy "Polvos Garfield," with mark similar to the complainant's; and the title whereon the action is founded is in folios 18;
- 3. That the accused alleges in his defense that he did in fact buy from a broker several packages of Garfield Tea, paying nine centavos for each; he did it without suspecting that he was acquiring goods with a spurious mark, not knowing the fact yet;
- 4. That it must be admitted that in the crime alleged-which would be that contemplated in paragraph 6 of Art. 48 of the Trade Mark Law-and it is so specified—that the very existence of the falsification of the mark and the knowledge that the accused has of said falsification are essential.
- 5. That the proof that the complainant has produced presents no elements establishing these two extremes, particularly if it is considered that the falsification that is claimed is, in the judgment of the undersigned, very difficult to discover, due to the quasi-identity shown by the envelope that has been presented as legitimate with the one allegedly false, which fact corroborates, for lack of substantuation in respect thereto, the claim of the accused.
- 6. That on the other hand the practice of the Federal Chamber has established in cases analogous to the present-among others, "The Appolinaris v. Ayarza," July 29, 1915—that the complainant must prove knowledge of the falsification or his part therein as to the accused.

For these reasons I decide, absolving Ricardo G. Durañona from blame and from accusation.

Be it inserted in the records and the papers returned.

(Signed) MIGUEL L. JANTUS.

(Translated from 16 Patentes y Marcas, 78.)

# Russia (German Occupation).

Industrial Property. Extension of Germany Laws. Ordinance No. 70, of March 11, 1916.

(Translation.)

ORDINANCE OF THE GOVERNOR GENERAL CONCERNING THE PROTECTION OF THE RIGHTS OF GERMAN SUBJECTS IN MATTERS OF INDUSTRIAL PROPERTY IN THE TERRITORY OF THE GOVERNMENT GENERAL OF WARSAW. (No. 70, March 11, 1916.)

Sec. I. Inventions, Gebrauchsmuster, industrial designs and models, and trade marks that are or shall be protected according to the laws:



- (a) concerning patents, of April 7, 1891 (Reichsgesetzblatt, 1891, p. 79);
- (b) concerning the protection of gebrauchsmuster, of June 1, 1891 (Reichsgesetzblatt, 1891, p. 290);
- (c) concerning the copyright over designs and models, of June 11, 1876 Reichsgesetzblatt, 1876, p. 11);
- (d) concerning the protection of trade marks, of May 12, 1894 (Reichsgesetzblatt, 1894, p. 441), may not be used commercially without the authorization of the party interested.
- Sec. 2. Violations shall be punished by fine up to 10,000 marks, or imprisonment for as much as two years. These two kinds of punishment may be pronounced cumulatively. Instigators, counterfeiters, and receivers shall be treated as the principal author.

Prosecution shall take place only on the complaint of the party interested. The complaint may be withdrawn. Persons that have their seat or their domicile elsewhere than in the territory of the German Empire or of the Government General of Warsaw shall not be authorized to make accusation.

Sec. 3. In place of the indemnity due for violation of the present ordinance, and on application of the injured party, there may be awarded to this latter, in addition to the fine, damages up to 50,000 marks. All of the parties convicted shall be jointly and severally responsible for the payment of these damages.

Sec. 4. The departmental tribunals are alone competent to take cognizance of violations punishable by virtue of the present ordinance. For the procedure concerning the award of damages, there shall be applied by analogy Secs. 443 to 445 of the German Code of Penal Procedure.

(Bulletin of ordinances for the Government General of Warsaw, No. 25, of March 22, 1916.) (From 32 La Propriété Industrielle, 54-see Blatt für Patent-, Muster- u. Zeichenwesen, April 26, 1916, p. 51.)

# Australian Commonwealth.

# Trade Marks. "Universal." Descriptive. Rejection. Decision.

A summary of this trade mark decision, reported in Australian Official Journal of Trade Marks, is published below. It will be noted therefrom that the application for the registration of this word as a trade mark was rejected on the ground that the word was contrary to the provision of Subsection (e) of Section 16 of the Australian Trade Marks Act, 1905-1912, which is to the effect that word or words having no reference to the character or quality of the goods, etc., etc., are registrable. This provision is almost identical with that of Subsection 4 of Section 9 of the British Trade Marks Act, and this decision and others lately rendered, together with our own experience, make it evident that the Australian practice follows closely the lines of the British and tends to exclude from registration any word having even a remote suggestion in relation to the goods, or having a laudatory character.

DECISION ON APPEAL TO LAW OFFICER, JULY 15 AND 16, 1915.

An application for registration of the word "Universal" in respect of musical instruments was filed and rejected by the Registrar on the ground that the word was not registrable as a trade mark, it being held to be a direct reference to the character or quality of the goods, because "Universal" implies "all embracing" and "all reaching," and is not infrequently used, by manufacturers and merchants in connection with the goods put on the market, for various descriptive purposes, and, if applied to musical instruments, has direct reference to the character and quality thereof. Applicant filed an appeal from this adverse decision, and among other arguments advanced in support thereof contended that the word sought to be registered as a trade mark has no direct reference to the character or quality of the goods to which its application was intended, and that as applied to musical instruments it would be meaningless and therefore registrable under Subsection (d) of Section 16 of the Australian Trade Marks Act, which provides that the essential particulars of a registrable trade mark may be, among other things, "an invented word or invented words."

The Law Officer affirmed the Registrar's decision and held that the word "Universal" is an adjective; would be classed in grammar as an adjective of quality; consequently would have some reference to the character or quality, if applied to musical instruments, because it would be considered to imply that these goods, among other characteristics and qualities, are possessed of a wide range of use or action.

# Austria.

#### Patent Office. New President, Dr. Karl Schima.

As successor to Baron Beck de Mannagetta (see 14 P. & T. M. Rev., 260), the Emperor has just called Dr. Karl Schima to the office of President of the Imperial Royal Patent Office, an office that confers on him at the same time the direction of that of the departments of the Ministry of Public Works that is concerned with the protection of industrial property. On this occasion Dr. Schima has been promoted to the rank of Chief of Section.

Born in 1862, Dr. Schima studied law at Vienna where he served his probation in the Landgeright, following which he became connected with the Government service. In 1890 he entered the Department of Privileges of the Ministry of Commerce, and since this time has been concerned exclusively with the protection of inventions and trade marks. Under the presidency of Baron de Mannegetta he took an active part in the revision of patent legislation, and in all matters of any importance that have taken place in the domain of industrial property. Since 1890 he has been Vice-President of the Patent Office. (From 32 La Propriété Industrielle, 63.)

# Patents. Delivery May Be Suspended. "War Measures." Decree No. 82, of March 24, 1916.

## (Translation.)

Decree Issued by the Minister of Public Works in Agreement with the Minister of National Defense Concerning the Suspension of Procedure for the Delivery of Patents of Invention. (No. 82, of March 24, 1916.)

By virtue of the Imperial Decree of Aug. 29, 1914 (Reichsgesetzblatt No. 227), concerning the effects of the state of war on terms, expirations, and procedure, the following is decreed:

- Sec. 1. (1) The procedure for the delivery of patents may be suspended by the Patent Office in the interest of national defense or in any other public interest for the duration of the present war.
- (2) The suspended procedure shall be resumed at latest on a date that shall be fixed by a later decree.

Sec. 2. The present decree shall become effective from the date of the publication that shall be made thereof.

(Signed) TRNKA, m. p.

GEORGII, m. p. (From 32 La Propriété Industrielle, 53.)

# Patents. Foreign Applications. Prohibition of Disclosure to Enemy. Official Circular of May 1, 1916.

(Translation.)

CIRCULAR OF THE MINISTRY OF NATIONAL DEFENSE CONCERNING PATENT APPLICA-TIONS AND WORKINGS IN NEUTRAL AND ENEMY COUNTRIES. (May 1, 1916.)

The improvements of means of war and the provisioning of populations in indispensable products are facilitated in a great measure by technical inventions. The State, therefore, has a greater interest not only in that inventions produced in this domain be placed at the disposal of the authorities charged with the conduct of the war and of public economy, but likewise in that they remain hidden from our enemies. It is for this reason that there is need to prevent as much as possible that they be known in enemy countries, or even in neutral countries, wherefrom they might be communicated easily to our enemies. It is, in consequence, in the interest of the country that, for the duration of the war, there be no applications filed in neutral or enemy countries for patents for the class of inventions, whereof it is a question. Whoever solicits in these countries protection for inventions of this class, or collaborates in such applications; whoever, by assigning such inventions, makes possible the application in these States, violates his most sacred patriotic duties and becomes liable in addition, according to the circumstances, to penal prosecution based on Sections 327 to 329 of the Military Penal Code. According to these provisions, he commits a crime, liable to a heavy penalty, against the military power of the State, who renders himself guilty of an act or of an omission susceptible of injuring the military power of the State or of an allied army, or of giving advantage to the enemy.

For these same reasons, it is incumbent on all those interested to cease validifying, and, particularly, working in enemy or neutral countries their inventions protected by patents, when they are of military and economic importance whereof mention is above made.

Persons that have intention to file patent applications in enemy or neutral countries, or who are interested in the validation, and, particularly, in the working of inventions patented in these States, shall be able to inquire whether the invention has the character above indicated of the Committee called: "Prüfungskommission für den Auslandschriftenverkehr in Sachen des Gewerblichen Rechtsschutzes" (k. u. k. Technisches Militär-Komitee, Wien VI, Getreidmarkt 9). Those interested have thus the opportunity to be instructed very clearly as to bearing of their acts. (From 32 La Propriété Industrielle, 53.)

# New Zealand.

Trade Marks. "Cream Equivalent." Distinctive. Decision of February 17, 1916.

From the report of this trade mark case published in Patent Office Journal (Illustrated), March 16, 1916, it appears that an application for registration of the words "Cream Equivalent" in respect of foods for animals was rejected by

the Registrar and that an appeal from this decision was lodged. The case was heard in the Supreme Court before Mr. Justice Chapman, who held that the words "Cream Equivalent" were registrable under subsection (1) (e), Section 64 of the Patents, Designs and Trade Marks Act, 1911\* in respect of the goods indicated above and ordered that the mark be registered.

# Copyright. Extension of the British Copyright Act, 1913.

EXTENSION OF THE COPYRIGHT ACT, 1913—ARTISTIC, ETC., WORKS OF BRITISH DOMINIONS NOT OTHERWISE PROVIDED FOR.

#### LIVERPOOL, Governor

At the Government Building at Wellington, this thirteenth day of March, 1916.

Present:

The Right Hon. W. F. Massey, P. C., Presiding Council.

Whereas by Order in Council dated the twenty-seventh day of March, one thousand nine hundred and fourteen, and published in the Gazette of the first day of April, one thousand nine hundred and fourteen, His Excellency the Governor of the Dominion of New Zealand, acting under the authority conferred on him by section twenty-eight of the Copyright Act, 1913 (Hereinafter referred to as "the said Act"), has extended the said Act to works first published in any part of His Majesty's dominions to which the Copyright Act, 1911 (1 & 2 Geo. V, c. 46), at the making of the said Order extended—viz., the United Kingdom, the Channel Islands, the Isle of Man, India, the Commonwealth of Australia, Papua, Norfolk Newfoundland, Ashanti, Bahamas, Barbados, Basutoland, Bermuda, British Guiana, British Honduras, Ceylon, Falkland Islands, Fiji, Gambia, Gibraltar, Gold Coast, Grenada, Hong Kong, Jamaica and Turks Islands, Leewards Islands, Malta, Mauritius, St. Helena, St. Lucia, St. Vincent, Seychelles, Sierra Ieone, Southern Nigeria, Straits Settlement, Trinidad and Tobago-as if such works were first published in New Zealand; and in respect of residence in any of the said parts of His Majesty's dominions as if such residence were residence in New Zealand:

And whereas it is desired that the said Act shall extend to all works in which copyright subsists in any part of His Majesty's dominions hereinbefore referred to, but to which that Act does not at present extend:

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of the said Dominion, and in pursuance and exercise of the powers and authorities conferred upon him by sections twenty-eight and twenty-nine of the said Act, and of all other powers enabling him in his behalf, doth hereby direct that the said Act shall, as from the first day of April, one thousand nine hundred and sixteen, extend to all works in which copyright subsists in any of the said parts of His Majesty's dominions but to which the said Act does not at present extend, subject to the following condition: Where proceedings are taken for infringement of the copyright in any of such works the plaintiff shall not be entitled to any remedy other than an injunction, which may be granted subject to such terms as the Court may prescribe, in respect of the infringement if the defendant proves that such works were first published by him in New Zealand prior to the first day of April, one thousand nine hundred and sixteen.

And His Excellency the Governor doth further direct that this Order in

<sup>\*</sup> For text see 10 P. & T. M. Rev., 3764.

Council shall apply to only those parts of His Majesty's dominions as aforesaid in which provision is made for copyright in all works in which copyright subsists in New Zealand on the date when this Order in Council takes effect.

(Signed) J. F. Andrews, Clerk of the Executive Council.

(From New Zealand Patent Office Journal, April 13, 1916.)

# South African Union.

Trade Marks. Law (Consolidating and Amending\*). Patents, Designs, Trade Marks and Copyright Act, 1916. Assented to April 15, 1916.\*\*

CHAPTER III.\*\*\*

TRADE MARKS.

Interpretation of Terms Used in This Chapter.

96. For the purposes of this Chapter-

"mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

"Provincial Trade Marks Act" shall mean a law in force in any Province on the 31st day of May, 1910, relating to the registration of trade marks, and shall include all regulations in force under such law;

"register" shall mean the register of trade marks kept under this Chapter; "registered trade mark" shall mean a trade mark registered under this Chapter;

"trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of that trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

PART I—TRANSITIONAL PROVISIONS.

Transfer of Administration of Provincial Trade Marks Acts.

97. The Governor-General may, by proclamation in the Gazette, declare that on a date therein specified the administration of the Trade Marks Acts of any Province shall be transferred to the trade marks office established under this Act.

Effect of Such Transfer.

98. On and after the date so specified-

(1) The Trade Marks Acts of any such Province shall, save as is otherwise expressly provided, cease to apply;

- (2) proceedings under a Provincial Trade Marks Act pending at the commencement of this Chapter may be continued and completed under the Provincial Trade Marks Act which shall, so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights and obligations, be administered by the registrar, who shall collect any fees payable thereunder;
- (3) all powers and functions under any Provincial Trade Marks Act vested in the Governor or in any Minister, officer or authority of any such Province as aforesaid shall yest in the Governor-General, Minister, officer

<sup>\*</sup>Consolidating the laws of Cape of Good Hope, Natal, Orange Free State, and Transvaal.

\*\*At the time of going to press we have received word that there is little probability
of any part of this Act becoming effective before 1917.

\*\*\*For "Introductory" provisions of this act see 14 P. & T. M. Rev., 263, for "General
and Supplementary Provisions" see page 310, this issue of the Review.

or authority exercising similar powers under the Union as the case requires or as is prescribed;

- (4) all the registers of trade marks existing under any Provincial Trade Marks Act shall be deemed to be incorporated with and to form part of the register established under this Chapter;
- (5) subject to the provisions of sections one hundred and twenty-three, one hundred and twenty-eight and one hundred and thirty-five of this Act, the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Chapter.

#### PART II .- REGISTRABLE TRADE MARKS.

# Essential Particulars of Registrable Trade Marks.

- 99. A registrable trade mark must contain or consist of at least one of the following essential particulars:—
  - (a) The name of a company, individual or firm represented in a special or particular manner; or
  - (b) the signature of the applicant for registration or of some predecessor in his business; or
    - (c) an invented word or invented words; or
  - (d) a distinctive word or words not reasonably required for use in the trade: or
    - (e) any other distinctive mark;

but a name or signature other than such as fall within the description in paragraphs (a) and (b) of this section shall not, except by order of the Minister or the court be deemed a distinctive mark:

Provided that any mark used as a trade mark in any Province by the applicant or his predecessor in business for ten years prior to the commencement of this Chapter and which has continued to be so used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration may be registered as a trade mark for any such Province.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons. In determining whether a trade mark is so adapted regard may be had in respect to a trade mark in actual use to the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

## What a Registrable Trade Mark may not Contain.

100. Except in the case of a trade mark properly registered under a Provincial Trade Marks Act, the registrar may refuse to register a trade mark which contains—

- (a) a representation of the King, the Queen, or any member of the Royal Family, or of the Royal Crown; or
- (b) the word "Royal" or any word, letter or device indicating Royal or Government patronage; or
  - (c) a representation of the Royal Arms, or of a national flag of the

United Kingdom, or of the national arms of the United Kingdom, or of the arms or seal of the Union; or

(d) a representation of any living person without his written consent.

# Limitation of Trade Mark as to Particular Colours. ...

101. A trade mark may be limited in whole or in part to a particular colour or colours, and in case of any application for the registration of a trade mark, the fact that the trade mark is so limited shall be taken into consideration by any tribunal in deciding whether it is distinctive or not. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Registration of Mark in Favour of Authorities Undertaking Examination of Goods.

- 102. (1) Where any Union or Provincial authority, or any association or person, undertakes the examination of any goods in respect of origin, material, mode or conditions of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connection with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority, association or person to register the mark as a trade mark in respect of such goods, whether the authority, association or person is or is not a trader, or is or is not possessed of a good will in connection with such examination and certifying.
- (2) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.
- (3) This section shall as to conditions of manufacture apply to Union and Provincial authorities only.

#### PART III .- REGISTRATION OF TRADE MARKS.

Trade Marks Must be Registered in Respect of Particular Goods or Classes of Goods.

103. A trade mark must be registered in respect of particular goods or classes of goods as prescribed.

Grounds for Requiring Disclaimer as to Particular Parts or Matter as a Condition of Registration.

104. If a trade mark-

- (a) contains parts not separately registered by the proprietor as trade marks; or
- (b) contains matter common to the trade or otherwise of a non-distinctive character,

the registrar or the court, as the case may be, in deciding whether the trade mark shall be entered or shall remain upon the register, may in his or its discretion require, as a condition of its being on the register that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration: Provided that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

# Trade Marks Identical with Registered Trade Marks of Another not to be Registered.

105. Except by order of the court, or, in the case of a trade mark falling within the proviso to section ninety-nine, no trade mark shall, save as is provided by section one hundred and eleven, be registered in respect of any goods or description of goods if such trade mark is identical with one belonging to a different proprietor and already registered in respect of such goods or description of goods, or if such trade mark so nearly resembles the other trade mark as to be calculated to deceive.

Refusal Where Several Applicants for Registration of Identical Trade Mark.

106. Where each of several persons applies to be registered as the proprietor of the same trade mark or of nearly identical trade marks in respect of the same goods or description of goods, the registrar may refuse to register the trade mark until the rights of the applicants have been determined by the court, or have been settled by agreement in a manner approved by him.

Circumstances Under Which Registration of Identical Trade Marks May Take
Place.

107. In case of honest concurrent user or of special circumstances the court may, in its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the same goods or description of goods by more than one proprietor, subject to such conditions and limitations (if any) as to mode or place of user or otherwise as it may think fit to impose.

# Registration of Associated Trade Marks.

- 108. (I) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be calculated to deceive or cause confusion if used by a person other than the applicant, the registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks.
- (2) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.
- (3) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the register as such, and the user of the whole trade mark shall for the purposes of this Chapter be deemed to be also a user of the part separately registered as a trade mark.
- (4) Associated trade marks shall be assignable or transmissible only as a whole and not separately; but they shall for all other purposes be deemed to have been registered as separate trade marks.

Acceptance of User of Associated Trade Marks as Equivalent for User of Registered Trade Mark.

109. Where under the provisions of this Chapter user of a registered trade mark is required to be proved for any purpose, the registrar, or the court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the user of the first-mentioned trade mark.

# Form of Application for Registration of Trade Mark.

- 110. (1) Any person, claiming to be the proprietor of a trade mark, may make application to the registrar for the registration of his trade mark.
- (2) The application must be made in the form prescribed, and be accompanied by the prescribed number of representations of the trade mark, and must—
  - (a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered; and
    - (b) state an address within the Union as an address for service.
- (3) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

# Procedure on Application for Registration of Trade Mark.

- III. (1) Every application must be lodged by being left at or sent by post to the trade marks office.
- (2) Where the same trade mark, or a nearly identical trade mark, is owned or registered by another proprietor in any Province of the Union in respect of the same goods, or description of goods, the trade mark may be registered, but any such Province may be excepted from the registration.
- (3) Where the trade mark, or a nearly identical trade mark, is common to the trade in another Province, the registration under this Chapter shall confer no exclusive rights in that Province on the registered proprietor, and that Province may be excepted from the registration under this Chapter.
- (4) Subject to the provisions of this Chapter, the registrar may either accept the application, with or without modification or conditions, or refuse it.
- Appeal to Court Against Refusal or Conditional Acceptance by Registrar of Application.
- II2. (1) In case of any such refusal or conditional acceptance, the registrar shall, if required by the applicant, state in writing the grounds of his decision, and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the court.
- (2) The court shall hear the applicant, and, if required, also the registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, the application is to be accepted.
- (3) Appeals under this section shall be heard on the materials so stated by the registrar to have been used by him in arriving at his decision; and no further grounds of objection to the acceptance of the application shall be taken by the registrar, other than those stated by him, except by leave of the court. When any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.
- (4) The registrar or the court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

#### Advertisement of Accepted Applications.

113. If the application is accepted with or without conditions or modifications, it shall forthwith be advertised in the prescribed manner.

## Non-Completed Applications.

114. If, by reason of default on the part of the applicant, the registration

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of a trade mark has not been completed within twelve months from the date of lodging of the application, the registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice or of such further time as the registrar may allow, the registration is not completed, the application shall be deemed to be abandoned.

# Notice of Opposition to Registration.

- 115. (1) Any person (hereinafter referred to as an objector) may, within two months after the date of the last advertisement of the application or within such further time as the registrar may allow, lodge at the trade marks office a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.
- (2) The registrar shall send a duplicate of the notice of opposition to the applicant.
- (3) Every notice of opposition shall state an address in the Union as an address for service.

# Lodging of Counter-Statement by Applicant.

- 116. (1) Within one month after the lodging of notice of opposition or within such further time not exceeding three months as the registrar (on application made within such first mentioned one month) allows, the applicant may lodge at the trade marks office, a counter-statement in duplicate setting out the grounds on which he relies to support his application.
- (2) The registrar shall send a duplicate of the counter-statement to the objector.
- (3) If the applicant fails so to lodge a counter-statement he shall be deemed to have abandoned his application.
- (4) The registrar may order that the cost of any proceeding under this section shall be paid by either party and his order shall be enforceable in all respects as if it were an order of a judge of the court.

### Hearing of Opposed Applications.

- 117. (1) The registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and the objector.
- (2) On the day so fixed, or on any other day to which the hearing is adjourned, the registrar shall hear the applicant and the objector and their respective witnesses, if any, and shall decide whether the application is to be refused or whether it is to be granted either with or without modifications or conditions.

# Appeal Against Registrar's Decision.

- 118. (1) The decision of the registrar shall be subject to appeal to the court in like manner and in all respects as if he were a judge of the court.
- (2) On such appeal the court shall hear the parties and, if required, the registrar, and shall make an order determining whether and subject to what conditions, if any, the registration is to be permitted.
- (3) On the hearing of any such appeal any party may, either in the manner prescribed or by special leave of the court, bring forward further material for its consideration.
- (4) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the objector or the registrar other than those stated by the objector as hereinbefore provided,

except by leave of the court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the objector on giving notice as prescribed.

(5) In any appeal under this section the court may, after hearing the registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark; but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

# Security for Costs.

119. If a party giving notice of opposition or of appeal neither resides nor carries on business within the Union, the registrar may order him to give security for costs, and if the order is not duly complied with, may treat the opposition or appeal as abandoned.

## Registration and Date Thereof.

120. When an application for registration has been accepted and has not been opposed, and the time for notice of opposition has expired, or has been opposed and has been granted, the registrar shall, unless otherwise directed by the law officer, register the trade mark as on the date of the lodging of the application, and such date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of the registration of the trade mark in the prescribed form.

#### Duration of Registration of Trade Mark.

121. The registration of a trade mark effected upon an application made under this Chapter shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Chapter.

## Assignment of Registered Trade Mark.

122. Subject to the provisions of this Chapter, the person for the time being entered in the register as proprietor of a trade mark shall have power to assign the trade mark.

## Registration Prima Facie Evidence of Right to Exclusive Use.

- 123. (1) The registration of a person as proprietor of a trade mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and the validity of the registration.
- (2) The registration of a person as proprietor of a trade mark shall, after the expiration of seven years from the date of the registration, (in the absence of fraud), be conclusive evidence of the validity of the registration and subject to this Chapter of his right to the exclusive use of the trade mark in respect to the goods in regard to which it is registered, unless the trade mark offends against the provisions of section one hundred and forty.

This sub-section shall not apply to a trade mark registered before the commencement of this Chapter, under a Provincial Trade Marks Act.

(3) Nothing in this Chapter contained shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods, upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register

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for such similar trade mark in respect of such goods under the provisions of section one hundred and seven.

Registration a Condition Precedent to Action for Infringement or Damages.

124. No person shall be entitled to institute any proceeding to prevent, or recover damages for, the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Chapter or under a Provincial Trade Marks Act.

What Constitutes Infringement of Rights Acquired by Registration.

125. The rights acquired by registration of a trade mark shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

In an action for the infringement of a trade mark the court, in trying the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

Registration Not to Interfere With Use by Any Person of His Own Name or Place of Business.

126. No registration under this Chapter shall interfere with any bona fide use by a person of his own name or place of business, or that of any of his predecessors in business or in the use by any person of any bona fide description of the character or quality of his goods.

Rights of Action for Passing Off Goods not Affected.

127. Nothing in this Chapter contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Renewal of Registration and Duration of Renewal.

128. The registrar shall, on application made in the prescribed manner and within the prescribed period by the registered proprietor of a trade mark registered or deemed to be registered under this Chapter, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this Part of this Chapter termed "the expiration of the last registration": Provided that in the case of a trade mark registered in the Transvaal before the commencement of this Chapter the expiration of the last registration shall be fourteen years after such commencement.

Removal of Trade Mark from Register if Conditions as to User or Renewal Not Complied With.

- 129. (1) At the prescribed time before the expiration of the last registration of a trade mark under this Chapter, the registrar shall send notice in the prescribed manner to the registered proprietor at his address for service in the Union of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise, upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration as may be prescribed.
  - (2) Where a trade mark has been removed from the register for non-

payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the registrar that there has been no bona fide trade user of such trade mark during the two years immediately preceding such removal.

PART IV .- ASSIGNMENT OF REGISTERED TRADE MARKS.

#### Assignment Only in Connection with Goodwill.

130. A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered, and shall be determinable with that goodwill.

# Apportionment in Case of Dissolution of Partnership, Etc.

- 131. (1) In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the registrar may (subject to the provisions of this Chapter as to associated trade marks) on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications (if any) as he may think necessary in the public interest.
- (2) Any decision of the registrar under this section shall be subject to appeal to the court.

#### PART V .- REGISTER OF TRADE MARKS.

#### Particulars to be Entered in Register.

- 132 (1) There shall be kept at the trade marks office a register of trade marks wherein shall be entered particulars—
  - (a) all registered trade marks, with the name and addresses of their proprietors, together with the date of registration and expiry thereof;
    - (b) notification of assignments and transmissions, and disclaimers; and
  - (c) any other matters relating to registered trade marks which are prescribed.
- (2) Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form prescribed, may be given to the registrar, who shall thereupon register the assignment or transmission.

### Amendment of Register.

- 133. (1) The registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark or by some person entitled by law to act in his name, amend or alter the register by—
  - (a) correcting any error in the name or address of the registered proprietor of the trade mark; or
  - (b) altering the name or address of the registered proprietor who has changed his name or address; or
    - (c) cancelling the registration of the trade mark; or
  - (d) striking out any goods or classes of goods from those in respect of which the trade mark is registered; or
  - (e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.
- (2) Where the register has been amended or altered under this section the registrar may—



- (a) cancel the certificate of registration of the trade mark and issue a new certificate of registration; or
- (b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.
- (3) Any decision of the registrar under this section shall be subject to appeal to the court.

Addition to an Alteration of Registered Trade Mark with the Leave of Registrar.

134. The registered proprietor of a trade mark may in the prescribed manner apply to the registrar for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the registrar may refuse or grant the leave on such terms as he thinks fit, but his refusal or the terms on which he grants the leave shall be subject to appeal to the court. If leave be granted, the registrar shall cause the register to be altered and shall in the prescribed manner advertise the trade mark as altered.

# Rectification to Register by Order of the Court.

- 135. (1) Subject to the provisions of this Chapter the court, on the application of any person aggrieved or of the registrar, may order the rectification of the register, by—
  - (a) the making of an entry wrongly omitted to be made in the register; or
  - (b) the expunging of any entry wrongly made in or remaining on the register; or
  - (c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the court ought to be inserted; or
  - (d) the correction of any error or defect in the register.
- (2) The registrar shall only make the application to the court under this section in cases where he thinks the application necessary or desirable in the public interest.
- (3) The court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.
- (4) No trade mark which is upon any register of trade marks at the commencement of this Chapter and which under this Chapter is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Chapter to which he would not have been subject under the Acts then in force.

# Removal of Trade Mark from Register by Order of Court.

136. A registered trade mark may, on application to the court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bona fide intention to use the same in connection with such goods, and there has in fact been no bona fide user of the same in connection therewith, or on the ground that there has been no bona fide user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is

shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

#### PART VI.-MISCELLANEOUS PROVISIONS.

General Jurisdiction of the Court.

- 137. In addition to any other powers conferred upon it by this Act, the court may in relation to any appeal or application under this Chapter—
  - (a) refuse to make any order;
  - (b) order any issue of fact to be tried in such manner as it directs;
  - (c) order any party to deliver to the court or to the registrar the certificate of registration of any trade mark; and
    - (d) order any party to pay costs to any other party.

Certification by the Court as to Right to the Excluisve Use of Trade Mark.

138. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question, the court may certify that the right to the exclusive use of the trade mark came into question, and was decided in favour of the registered proprietor of the trade mark, and then in any subsequent action for infringement of the trade mark the plaintiff on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the court trying the subsequent action certifies that he ought not to have them.

Power of Registrar to Allow Amendment of Application or Notice of Opposition.

139. The registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just.

Scandalous Designs, Etc., not to be Registered.

140. No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a court of justice or the use of which would be contrary to law or morality, shall be registered as a trade mark or part of a trade mark.

NOTE: For "General and Supplementary Provisions,4" see following article in this issue of the Review.

Patents. Designs. Trade Marks. Copyright. Law (Consolidating and Amending). General and Supplementary Provisions.\* Patents, Designs, Trade Marks and Copyright Act, 1916, Assented to

April 15, 1916.

CHAPTER V.

## GENERAL AND SUPPLEMENTARY PROVISIONS

A.—General.

Seals of Offices.

161. There shall be seals of the patent office, the designs office, the trade marks office, and the copyright office, and impressions of any such seal shall be judicially noted and admitted in evidence.

General Powers of Registrar.

162. (1) The registrar may, for the purposes of this Act—

<sup>\*</sup> For specific provisions relating to patents, see 14 P. & T. M. Rev., 263; trade marks, this issue p. 300, designs and copyright, in a later issue, of the Review.



- (a) receive evidence and determine whether and how far it shall be given by affidavit or viva voce upon oath;
  - (b) summon witnesses and issue commissions de bene esse;
- (c) order discovery or inspection, and require the due production, of documents;
  - (d) award costs against any party to any proceedings before him.
- (2) The registrar may, on request in writing accompanied by the prescribed fee, correct any clerical error in any register kept by him under this Act or in any proceedings before him.
- (3) Whenever by this Act any time is specified within which any act or thing is to be done the registrar may, unless otherwise expressly provided, extend the time either before or after its expiration.

Notice to Registrar of Application to the Court.

163. The prescribed notice shall be given to the registrar by every applicant of any application to the court under this Act.

Taxation of Costs Awarded by the Registrar.

164. Any costs awarded by the registrar shall be taxed by a taxing officer of the court and payment thereof may be enforced in the same manner as if they were costs allowed by a judge of the court.

Duty of Registrar in Exercising Discretionary Power to Give Opportunity to Applicant of Being Heard.

165. Whenever any discretionary power is by this Act given to the registrar he shall not exercise that power adversely to an applicant without (if so required by the applicant within the prescribed time, if any) giving that applicant an opportunity of being heard personally or by his attorney or agent.

## Trusts not to be Registered.

166. No notice of any trust expressed, implied, or constructive shall be entered in any register kept under this Act, or be receivable by the registrar.

#### Register to be Prima Facie Evidence.

167. Any register kept under this Act shall be prima facie evidence of any matters directed or authorized by this Act to be inserted in that register.

# Inspection of Registers.

168. The registers kept at any office established under this Act shall, on payment of the prescribed fees, and subject to the provisions of this Act, be open at all convenient times in office hours to the inspection of the public.

Certified Copies of Entries in Registers to be Furnished on Application.

169. A certified copy of an entry in any register kept in any office established under this Act shall, subject to any special provisions to the contrary contained in this Act, be given to any person who applies for such a copy and pays the prescribed fee.

# Certificates of Registrar to be Evidence.

- 170. (1) A certificate purporting to be under the hand of the registrar as to any entry, matter or thing which he is authorized by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or left undone.
- (2) Printed or written copies or extracts purporting to be certified by the registrar and sealed with the seal of any office established under this Act and

documents purporting, when certified, to be copies or extracts from any register or book or document relating to patents, designs, trade marks or copyright and kept in any such office shall be admitted in evidence in all courts and proceedings without further proof or production of the originals.

Payment of Prescribed Fees to be Made Before Acts Done or Documents Issued or Works Received.

171. Whenever under this Act any prescribed fee is payable in respect of any application, registration, matter, document or work, the registrar may refuse to perform the act or to receive or to issue the document or to receive the work (as the case may be) until the fee payable in respect thereof is paid.

Lodging of Documents With and Giving of Notices May be Through the Post.

172. Any application, notice or document authorized or required under this Act to be lodged, made or given at the patent office, the designs office, the trade marks office, or the copyright office or to the registrar or any other person, may be sent by letter through the post.

# Address for Service and Change of Such Address.

- 173. (1) Any address for service stated in any application or notice of opposition under this Act shall, for all purposes of the application or the notice of opposition, be deemed to be the address of the applicant or of the opponent (as the case may be) and all documents in relation to the application or notice of opposition may be served by leaving them or sending them to the address for service of the applicant or of the opponent as the case may be.
  - (2) Any address for service may be changed by notice to the registrar.

    Persons Under Disability.

174. If any person is, by reason of minority, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted by this Act, then the guardian, curator or other legal representative (if any) of such person or if there be none, any person appointed by the court upon petition on behalf of the person under disability or on behalf of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the person under disability, and all acts done by such substitute shall, for the purposes of this Act, be as effectual, as if done by the person for whom he is substituted.

Substitution of Successor in Interest in Case of Death of Party to Proceedings.

175. If a person who is a party to a proceeding under this Act dies pending the proceeding, the registrar or the court (as the case may be) may, upon request made in the prescribed manner and on proof to his or its satisfaction of the transmission of the interest of the deceased person substitute in the proceeding his successor-in-interest in his place or if the registrar or the court is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to be continued without such substitution.

Evidence Before Law Officer and Jurisdiction of Law Officer to Make Order as to Costs.

176. Subject to any regulations prescribed in respect of any proceeding under this Act before the law officer, the evidence shall be given by affidavit in the absence of directions to the contrary but in any case in which he thinks it right to do so the law officer may take evidence viva voce in lieu or in addition to

evidence by affidavit or allow any declarant to be cross-examined on his declaration. The law officer may order costs to be paid by either party and such order may on the application of either party be made an order of the court.

## Application to Law Officer for Directions.

177. The registrar may, in case of doubt or difficulty arising in the administration of any provisions of this Act which are to be administered by the registrar, apply to the low officer for directions in the matter.

#### Agency.

178. Subject to the provisions of this Act, the registrar shall permit an agent to do on behalf of the person for whom he is agent any act in connection with registration under this act or any procedure relating thereto.

#### B .- OFFENCES AND PENALTIES.

Penalties for Making False Entries in Registers, Etc. for Producing or Tendering False Entries.

179. Any person who-

- (a) makes or causes to be made a false entry in any register kept under this Act; or
- (b) makes or causes to be made a writing falsely purporting to be a copy of an entry in any such register; or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof,

knowing the same to be false, shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding three years.

Penalty for Making False Statements for the Purpose of Deceiving or Influencing
Registrar or Other Officer.

180. Any person who-

- (a) for the purpose of deceiving the registrar or any officer in the execution of the provisions of this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder, makes a false statement or representation knowing the same to be false, shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period not exceeding one year.

#### Prohibition as to Officers of Patent Office Trafficking in Patents.

- 181. (1) Any officer of the patent office who buys, sells, acquires, or traffics in any invention or patent, or in any right under a patent shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pouds.
- (2) Every purchase, sale, or acquisition and every assignment of any invention or patent by or to any such officer shall be null and void.
- (3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

## Penalty for Practising as a Patent Agent Unless Registered as Such.

182. Any person, not being a registered patent agent or an attorney, who practises or acts as a patent agent, and any person, not being a registered patent agent, who describes himself as a patent agent, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds.

Penalty for Use of Word "Patent Office," Etc., on Place of Business.

183. Any person who uses on his place of business or on any document issued by him or otherwise the words "patent office," "designs office," or "trade marks office," or "copyright office," or any other words suggesting that his place of business is officially connected with or is one of the offices established under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.

Penalty for Falsely Describing Articles for Sale as Patented Articles.

- 184. (1) Any person who falsely represents that any article sold by him is a patented article shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment without the option of a fine for a period not exceeding three months.
- (2) If any person sells any article on which is stamped, engraved, or impressed or to which is otherwise applied the word "patent," "patented" or any other word expressing or implying that the article is patented, he shall be deemed for the purposes of this section to represent that the article is a patented article.

Penalty for Falsely Describing as Registered a Design Which is Unregistered and Placed on any Article Sold by Him.

185. (1) Any person who falsely represents as being registered a design or trade mark which is not registered and which is applied to any article sold by him shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds.

If any person sells an article on which there is stamped, engraved or impressed, or to which there is otherwise applied the word "registered" or any other word expressing or implying that the design or trade mark applied to that article is registered he shall be deemed for the purposes of this sub-section to represent that the design or trade mark applied thereto is a registered design or trade mark.

(2) Any person who after a copyright in a design has, in accordance with Chapter II, expired, puts or causes to be put on any article to which the design has been applied the word "registered" or any word or words implying that there is a subsisting copyright in the design shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds.

Penalty for the Unauthorized Use of Royal Arms or Union Arms.

- 186. (1) The grant of a patent or the registration of a design or trade mark under this Act shall not be deemed to authorize the patentee or registered holder of the design or trade mark to use the Royal Arms or the Arms of the Union on any article.
- (2) Any person, who, without the authority of the King or of some member of the Royal Family or of the Governor-General in person (the burden of proof of which authority shall be upon the accused), assumes or uses in connection with any patent, design or trade mark, the Royal Arms or arms so nearly resembling the Royal Arms as to be calculated to deceive in such a manner as to be likely to lead other persons to believe that he is carrying on his trade, business, calling or profession by or under such authority, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds.
- (3) Any person who, without the authority of the Governor-General-in-Council (the burden of proof of which authority shall be upon the accused), acts in connection with the Arms of the Union in manner described in sub-section



(2) in relation to the Royal Arms shall be guilty of an offence and liable on conviction to the penalty mentioned in that sub-section.

## Penalties in Respect of Defaulting Witnesses.

- 187. (1) Any person who, having been duly summoned to appear as a witness before the registrar, fails without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons shall be guilty of an offence.
- (2) Any person who, having appeared as a witness before the registrar, refuses without lawful excuse to be sworn or to make affirmation, or to produce documents, or to answer questions which he may be lawfully required to answer shall be guilty of an offence.
- (3) Any person guilty of an offence mentioned in this section shall be liable on conviction to a fine not exceeding fifty pounds.

# Imprisonment in Default of Payment of Fines.

- 188. Whenever under this Act an offence is punishable by a fine the court which imposes the fine may, without prejudice to the provisions of any law authorizing the seizure and sale of the movable property of the offender to pay the fine, sentence the offender to imprisonment for a period—
  - (a) not exceeding seven days, if the fine imposed do not exceed five pounds;
  - (b) not exceeding fourteen days if the fine imposed do not exceed ten pounds;
  - (c) not exceeding one month, if the fine imposed do not exceed twenty-five pounds;
  - (d) not exceeding three months if the fine imposed exceed fifty pounds, unless the fine be sooner paid.

## Special Jurisdiction of Magistrate's Court.

189. A magistrate's court shall have special jurisdiction to impose the maximum penalties prescribed for an offence against this Act punishable by a fine, anything to the contrary notwithstanding in any law relating to magistrate's courts.

#### C.—Supplemental.

References in Certain Laws to Provincial Laws to be Construed as Being References to Corresponding Provisions of this Act.

190. Any reference in any law in force prior to the 31st day of May, 1910, to any Provincial Patent Act, Provincial Designs Act, Provincial Trade Marks Act or Provincial Copyright Act (and not being itself such an Act) shall be construed as being a reference to the corresponding provisions, so far as possible, of this Act.

## International and Intercolonial Arrangements.

191. The provisions of sub-sections (2) and (3) of section forty-one and sub-sections (4) and (5) of section eighty shall not apply to any country outside the Union unless and until the Governor-General has, by proclamation in the Gazette, declared that such country affords privileges similar to those described in the said sub-section respectively to persons residing in the Union.

#### Fees and Regulations.

192. (1) The Governor-General may prescribe a tariff not inconsistent with

this Act, of the fees which shall be payable to the registrar in respect of any application, registration matter or document or work and the fees shall be payable as so prescribed.

- (2) The Governor-General may also make regulations, not inconsistent with this Act, as to all matters which by this Act are required or permitted to be prescribed by regulation or which are necessary or convenient for giving effect to the provisions of any Chapter of this Act or for the conduct of any business relating to any office established by this Act.
- (3) If either House of Parliament resolve within thirty days after any such tariff or regulation has been laid on the Table thereof in accordance with law that any item of the tariff or that the regulation shall be disallowed, then such item or regulation shall thereupon become of no effect, without prejudice to the validity of anything done in the meanwhile thereunder or to the power to make a new tariff or regulation.

### Interpretation of Terms.

193. In this Act, unless inconsistent with the context-

"imprisonment" shall mean imprisonment with or without hard labour as the court which passes sentence may direct;

"law officer" shall mean such law adviser of the Union Government, as the Minister may designate by notice in the Gazette, to exercise the powers and to perform the duties in any one or more Provinces or other areas of the Union, conferred or imposed by this Act upon the law officer;

"prescribed" shall in relation to proceedings before the court mean prescribed by rules of court and in relation to other matters shall mean prescribed by or under the authority of this Act or the regulations;

"register" shall in Chapter V mean any register kept under this Act and in any other Chapter of this Act mean a register kept in accordance with that Chapter;

"registrar" shall mean the registrar of patents, designs, trade marks and copyright appointed under this Act and when used in Chapters I, II, III and IV shall be respectively the registrar of patents, the registrar of designs, the registrar of trade marks, or the registrar of copyright, as the case may be;

"regulation" shall mean any regulation made and in force under this Act; "the court" shall, subject to the provisions of section thirty, mean in respect of any matter the provincial or local division which by law has jurisdiction in respect of that matter:

"this Act" shall include any rules of court or any regulations made thereunder.

Any expression defined for the purposes of any Chapter of this Act shall when used in any other Chapter, bear the meaning assigned to it in the Chapter in which it is defined.

### Repeal of Laws.

194. Subject to the provisions of this Act, the laws mentioned in the Fifth Schedule to this Act are hereby repealed to the extent specified in the fourth column of that Schedule: Provided that the repeal of any such law relating to a matter for which provision is made by any particular Chapter of this Act shall take effect at the commencement of that Chapter.

Short Title.

195. This Act may be cited for all purposes as the Patents, Designs, Trade Marks, and Copyright Act, 1916.

# United States.

Patent Office. Receipt of Papers. Procedure (Amendatory). Order No. 2259, of June 9, 1916.

228 O. G., I.

DEPARTMENT OF THE INTERIOR, UNITED STATES PATENT OFFICE,

Washington, D. C., June 9, 1916.

Acting under the provisions of section 483 of the Revised Statutes and with the approval of the Secretary of the Interior, Rule 12 of the Rules of Practice in the Patent Office is amended by inserting after "midnight," in the third line of the second paragraph, the words on week-days, including holidays, so that the rule as amended will read as follows:

12. Mail reaching the post-office at Washington, D. C., up to 4.30 p. m. on week-days, excepting holidays, and I p. m. on half-holidays, is entered as received in the Patent Office on the day it reaches the post-office.

Special-delivery letters and other papers may be deposited in a box provided at the watchman's desk at the F street entrance of the Patent Office up to midnight on week-days, including holidays, and all papers deposited therein are entered as received in the Patent Office on the day of deposit.

Letters received at the Office will be answered, and orders for printed copies filled, without unnecessary delay. Telegrams, if not received before 3 o'clock p. m., cannot ordinarily be answered until the following day.

(Signed) THOMAS EWING, Commissioner.

# International Union.

Official Journals. Contents.

# LA PROPRIÉTÉ INDUSTRIELLE. MAY.

OFFICIAL PART. Domestic Legislation: A. Measures taken by reason of the present state of war. Austria. I. Ordinances concerning the interruption of procedure for the delivery of patents of invention (No. 82 of March 24, 1916).—II. Circular of the Ministry of National Defense concerning patent application and working in neutral and enemy countries (May 1, 1916).—Canada. Order in Council prolonging the term for the working of patented inventions (Feb. 14, 1916).—Russia (German Occupation). Decree of the Governor General concerning the protection of the rights of German subjects in industrial property matters within the territory of the Government General of Warsaw (No. 70, of March 11, 1916).—B. Ordinary Legislation. Brazil. I. Regulation of the Commercial Council of Rio de Janeiro (Decree No. 9210, of Dec. 15, 1914).—II. Regulation of the Secretary of State of Agriculture, Industry and Commerce (No. 11,436, of Jan. 13, 1915).—Spain. Royal Decree relative to the interpretation

of Art. 54 of the Regulation of June 12, 1903, for the execution of the law concerning industrial property (Nov. 2, 1912).—France. Law amending Art. 8, \$1, of the Law of July 14, 1909, concerning designs and models (Jan. 6, 1916).—New Zealand. Patents, Designs, and Trade Marks Act (No. 140, of 1908) (provisions concerning merchandise marks).—Sweden. I. Law prohibiting the affixing of false indications of origin on merchandise, as well as the sale of merchandise falsely marked (Oct. 9, 1914).—II. Law amending that of June 4, 1913, which prohibits the importation of merchandise bearing a false indication of origin (Oct. 9, 1914).

UNOFFICIAL PART. Jurisprudence: Switzerland. I. Patent of invention; definition under the old law.—Patent of invention; foreigner domiciled abroad; sequestration; competent authority; place of the patent.

Miscellaneous News: GERMANY. Protection of industrial property in German Occupation of Poland.—Austria. Patent Office; nomination of a new Director.—HUNGARY. Reform of patent legislation.

Bibliography: Periodicals.

Statistics: GERMANY. Industrial property during 1915.

#### LE DROIT D'AUTEUR.

#### MAY.

OFFICIAL PART. British Colonial Legislation: I. Autonomous Colonies. B. Colonies having accepted in whole or in part the codification of 1911. I. Australian Commonwealth. Law No. 20 concerning copyright (Nov. 20, 1912) with regulation for its execution (Dec. 19, 1913).—Annexes: (a) Papua. Proclamation concerning the promulgation of the law of 1911 (Jan. 14, 1913).—(b) Norfolk Island. Proclamation (Jan. 28, 1913).—2. New Zealand. (a) Law concerning copyright (Nov. 22, 1913).—(b) Ordinance for application to the other parts of the Empire (March 27, 1914).—(c) Ordinance for application to foreign works (March 27, 1914).—(d) Ordinance concerning the promulgation of regulations (March 27, 1914).—(e) Ordinance concerning the promulgation of a regulation relative to the importation of pirated copies (March 27, 1914).—Newfoundland. Law concerning copyright (April 18, 1912).

UNOFFICIAL PART. Miscellaneous: I. Posthumus rights of authors. Literary heritage of Tolstoi; judicial determination.—The author's rights of a deceased English writer of fiction; offered at auction in Italy.—Tragic case of attempted substitution of productions and its consequences as regards public domain.—Gottfried Keller and his translator; free exercise of the right of translation just prior to the constitution of the Berne Convention. Disappearance of the right of translation, and necessary control.—II. Present Day. Conditions of permissible publicity in the periodic press; permissions for excerpts; simultaneous offers of manuscripts; deceptive methods of remuneration; cheques and receipts bearing mention of the integral assignment of copyright. Consent to be secured for reproduction of portraits in newspapers,—III. Attempts made in the author's name or under the assumed names created by writers or artists (Denmark, Germany, United States): Usurpation of name; fictitious production; production provided with false indication of deceased scholar; creation of typical personages under special denominations; appropriation of literary character and its denominations; usurpation permitted for similar appellations as trade marks, in spite of copyright.—IV. Miscellaneous. Two workshops of spurious pictures.—Communalization of cinemas in Norway, and copyright.

Jurisprudence: GERMANY. Musical works reproduced in a new edition contrary to agreement with Vienna publisher; application of German law.—The Netherlands. Illegal rendition of French musical works by a restaurateur; pretended lack of legal personality of the foreign plaintiff corporation.—Switzerland. Plastic and sketched model of a patented stereorama, colored by a painter; topographic design; artist working for another artist; presumed assignment of copyright; patent and copyright.

# Adjudicated Patents.

No. 1,095,406. Lawson. Machine for applying bottle-closures. Held valid. 226 F. R., 203.

No. 662,714. Feuchtwanger. Skirt. Held not anticipated and valid. 226 F. R., 448.

No. 743,206. Weber. Incandescent-electric-light socket. Held valid. 226 F. R., 481 and 482.

No. 1,032,557. Luellen. Sanitary cup of paper. Held valid. 226 F. R., 465. No. 1,081,508. Luellen. Dispensing apparatus for delivering a cup or fluid container. Held not anticipated and valid. 226 F. R., 465.

No. 1,095,406. Lawson. Improvement in machines for applying bottles-closures. Held valid. 226 F. R., 455.

No. 458,135. Tompkins. Process of making paper-stock. Held void for anticipation. 226 F. R., 744.

No. 793,249. Todd. Check-protector device. Held (claims 1, 3 and 8) valid, and claim 5 void for lack of invention. 226 F. R., 791.

No. 793,779. Fisher Recording safe or bank for coins. Held (claim 8) valid and infringed on motion for preliminary injunction. 226 F. R., 788.

Nos. 817,436 and 826,349. McLean. Mechanism and method for regulating furnaces. Held not anticipated and valid. 226 F. R., 779.

No. 845,224. Eibel. Improvement in Fourdriner machines. Held void for prior public use. 226 F. R., 766.

No. 879,965. Hoxie. Staple forming and discharging mechanism. Held not anticipated and valid. 226 F. R., 774.

Nos. 968,597 and 1,082,762. Parkin. Improved carbureter. Held valid. 226 F. R., 800.

No. 817,438. McLean. Apparatus and method for regulating furnaces. Held not anticipated and valid. 226 F. R., 949.

No. 826,349. McLean. Apparatus and method for regulating furnaces. Held not anticipated and valid. 226 F. R., 949.

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No. 1,011,450. DeLaski and Thropp. Wire-wrapping machine. Held not anticipated and valid. 226 F. R., 941.

No. 13,466 (reissue). Adt. Eyeglass-mountings. Held void for lack of patentable invention, novelty, utility in view of the prior art. 226 F. R., 925.

No. 1,019,116. Adt. Eyeglass-mountings. Held void for lack of patentable invention, novelty, or utility in view of the prior art. 226 F. R., 925.

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#### WM. WALLACE WHITE

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Woolworth Building

New York City

(Richards & Co., 1879-1906)

# **Translations**

FRENCH — GERMAN — SPANISH — ITALIAN — PORTUGUESE

Literary — Legal — Technical — Scientific Reference: Patent and Trade Mark Review

Address: Box 7, 1678 Woolworth Bldg., New York City

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# Patent and Trade Mark Review

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A monthly journal for the publication of new laws and regulations, court decisions, and information with regard to patents, trade marks and other related subject-matter.

Edited and Published by

WM. WALLACE WHITE,

Attorney and Counsellor at Law,

Patents and Trade-Marks,

Successor to

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# Luxemburg.

## Patents. Trade Marks. Statistics, 1915.

During the year 1915 the number of patents granted to Luxemburgians was 4; Germans, 71; French, 1; Americans, 9; Miscellaneous, 4; a total of 89. During the year 1913 the total was 494, and in 1914 the number was 324.

Of trade marks registered during 1915, 16 were domestic; 34 German; 25 American; 22 French; and one miscellaneous. In 1913 the number was 337, and in 1914 the total was 140. (From report by Mr. Ch. Dumont, in 32 La Propriété Industrielle, 75.)

# Brazil.

# Industrial Property. Weights. Measures. Temperature. Requirements.

We are requested by one of our Rio de Janeiro correspondents to make mention that the Brazilian requirements are exceedingly strict as regards references to weights, measures, temperature, etc. The matter is covered by Art. 23 of the Patent Law (last part), as follows:

"Indications of weight and measure shall be made according to the metric system; those of temperature according to the Centigrade thermometer; and those of density by specific weight."

# Serbia (Austrian Occupation).

# Trade Marks. Designs. Models. Applications. Renewals. Hungarian Law Effective. "War Measures." Notice.

The Serbian law of 1888 concerning trade marks, and that of 1884, concerning industrial designs and models are yet in force. If the term of protection of a mark—which is ten years—is expired, the protection obtained may be prolonged for a new term of ten years on payment of the prescribed fee of 250 dinars (125 crowns). The payment must be made at the competent tribunal of the military authority of the Bridge and City of Belgrade, in the Section of Civil Affairs. The application should be accompanied: (1) by an excerpt of the proceedings showing the deposit of the mark in Servia, which each proprietor of a mark has received at its grant, and which indicates among other things the number of the mark; and (2) by three copies of the reproduction of the mark. The application need not, for the present, be stamped. Thereafter, protection is effectively granted to the mark for a new term of ten years. Applications for the registration of new marks are likewise accepted. (Translation from notice by Oesterr. Handelsmuseum in 32 La Propriété Industrielle, 87.)

# Norway.

# Patents. Statistics for 1913, 1914, 1915.

The number of patents granted in Norway for the years 1913, 1914 and 1915, was, Norwegians, 529, 505 and 607; Swedes, 133, 109 and 108; Danes, 87, 60 and 71; Germans, 564, 400 and 241; Austrians, 47, 39 and 13; Hungarians, 12, 7 and 7; Belgians, 44, 38 and 12; Spanish, 5, 1 and 2; Americans, 134, 134 and 110; French, 72, 57 and 32; British, 179, 121 and 73; Australians, 17, 7 and 3; Canadians, 25, 8 and 8; New Zealanders, 9, 4 and 4; Other British,—, 1 and 1; Italians, 19,

29 and 10; Japanese, 1, 2 and —; Dutch, 8, 3 and 10; Portuguese, —, 1 and 1; Rumanians, 1, — and 1; Russians, 30, 25 and 16; Swiss, 36, 36 and 16; other countries, 10, 3 and 4. The totals being for 1913, 1,962; 1914, 1,590 and 1915, 1,350. (From 32 La Propriété Industrielle, 75.)

# Patents. Applications. Priority under the Convention. Prolongation of Term. Proposed War Measures. Notice.

We are informed that the President of the Norwegian Patent Office has submitted to the Government the draft of a law, under the provision of which the term for filing patent applications under the Convention will be prolonged. This provision will extend to all applications based on original applications filed in countries adhering to the Union and filed in Norway not earlier than one year prior to the outbreak of the war, with the proviso, however, that applicants be subjects or citizens of countries granting similar privileges.

# Johore.\*

Patents. Law (Amendatory). Enactment No. 1 of February 18, 1915.

AN ENACTMENT TO AMEND THE INVENTIONS ENACTMENT, 1911.†

It is hereby enacted by His Highness the Sultan in Council, as follows:

Short Title and Commencement.

I. (i) This enactment may be cited as "The Inventions Enactment, 1911, Amendment Enactment, 1915," and shall come into force upon the publication thereof in the Gazette.

#### Construction.

- (ii) This enactment shall be read and construed as one with The Inventions Enactment, 1911,† hereinafter called "the principal Enactment," and any copy of the principal Enactment printed after the commencement of this Enactment may be printed with the additions and alterations made by this Enactment.
- 2. The definition of the term "Inventor" in section 2 of the principal Enactment is deleted and the following is substituted therefor:
  - "Inventor" includes the first importer into the State of an invention not publicly used or known in the United Kingdom of Great Britain and Ireland or in any possession or dependency thereof or in the State, and also includes the executors, administrators and assigns of an inventor. (From Patent Laws of the World (Supp. 30) of The Chartered Institute of Patent Agents.)

#### Denmark.

Patents. Designs. Trade Marks. Applications. Taxes. Renewals. Extension of Terms. "War Measures." Notice of March 31, 1916.

(Translation.)

NOTICE CONCERNING THE TEMPORARY EXTENSION OF CERTAIN TERMS ESTABLISHED BY THE LAW OF APRIL 13, 1894, CONCERNING PATENTS. (March 31, 1916.)

By virtue of the authorization contained in Law No. 201, of Sept. 10, 1914,\*

<sup>\*</sup>Johore—one of the British protected Malay States—comprises the southern extremity of the Malay Peninsula, has a population of nearly two hundred thousand persons, and an area of 9,000 square miles. Its chief town is Johore Bahru.

† See 9 P. & T. M. Rev., 3599.

<sup>•</sup> For translation see 13 P. & T. M. Rev., 68.

Jan. 1, 1917, is fixed as the date which, according to the Notice of the Ministry of Commerce, No. 210, of Sept. 11, 1914, is the limit for delays and extensions of terms mentioned in the said notice.

It is hereby brought to public notice. Ministry of Commerce, March 31, 1916.

(Signed) HASSING JÖRGENSEN.

P. Herschend.

Editor's Note: Under same date like provision is made concerning trade marks and designs. Prior notices in regard to same are found in 13 P. & T. M. Rev., 68, 69. (From 32 La Propriété Industrielle 65, June, 1916.)

# Transvaal.

Patents. Designs. Trade Marks. Enemy Holders. Avoidance or Suspension. "War Measures." Enemy Trading Act No. 39/16, of June, 1916.

We are indebted to Messrs. D. M. Kisch & Co., of Johannesburg, under date of June 28, 1916, for the information that the first special war legislation enacted in the South African Union is that of Transvaal, in the *Enemy Trading Act No. 39/16*, of June of the present year. The particular provisions relating to enemy patents, designs, and trade marks are the following:

- 4. (1) The Governor-General shall appoint a person to act as custodian of enemy property (in this Act referred to as "the custodian") for the purpose of receiving, holding, preserving, and dealing with such property as may be paid to or vested in him in pursuance of this Act. The custodian shall have such powers and duties with respect to the property aforesaid as may be prescribed by regulations which the Governor-General is hereby authorized to make, provided that no such regulation shall be inconsistent with any provision of this Act.
- (2) The custodian may place on deposit with any bank, or invest in any securities, approved by the Treasury, any moneys paid to him under this Act, or received by him from property vested in him under this Act, and any interest or dividends received on account of such deposit or investments shall be dealt with in such manner as the Treasury may direct.
- 17. (1) If the benefit of an application made by or on behalf or for the benefit of an enemy or enemy subject for any letters patent is, by an order under this Act, vested in the custodian, the patent may be granted to the custodian as patentee and may, notwithstanding anything in the law relating to the grant of letters patent, be sealed accordingly by the registrar of patents.
- (2) The Governor-General may direct that any patent or licence to use a patent, which has been granted to an enemy or enemy subject or the registration of any design or trade mark the proprietor whereof is an enemy or enemy subject, shall be avoided or suspended or that any proceedings on an application by an enemy or enemy subject for a patent, design or trade mark or for an extension of the time within which any act or thing may be done by an enemy or enemy subject in connection with any patent, design or trade mark shall be avoided or suspended.

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# Portugal.

Patents. Of Interest to Public Defense. "War Measures." Decree No. 2,452, of June 17, 1916.

(Translation.)

MINISTRY OF PUBLIC INDUSTRY.

DIRECTION GENERAL OF COMMERCE AND INDUSTRY.

Whereas, the disclosure of inventions that are of interest particularly to warfare may under present circumstances bring about inconveniences and be harmful to the interests of the allied nations;

In virtue of the powers granted by laws, No. 373, of Sept. 2, 1915, and No. 401 of March 12, 1916:

I DECREE THE FOLLOWING:

Art. 1. During the continuance of the war, when it is deemed that the publication of an invention, for which a patent application is presented, may offer dangers or inconveniences for the national defense or in respect to the allied nations, the publication of the claims relative to that invention shall be suspended, there being published merely the notice of the filing of the application in the Boletim da Propriedade Industrial, wherein shall be mentioned only the title of the invention.

Only Section. This resolution shall be carried into effect by the Minister of Public Industry, on motion of the Direction General of Commerce and Industry, the Ministers of War and Navy being heard when it be deemed necessary.

Art. 2. The priority of inventions, under the conditions to which the foregoing article refers, shall be determined by the date of filing of the respective application; but the patent may only be granted after the termination of the state of war, and after the publication of the claims of the invention being made, and the legal term for oppositions having expired.

This decree shall enter into force at once, and it abrogates those provisions to the contrary.

Be it executed and enforced by the Minister of Public Industry.

At the Government House of the Republic, June 17, 1916.

(Signed) BERNARDINO MACHADO,

Francisco José Fernandes Costa.

(From Diário do Govêrno, June 17, 1916.)

# Kelantan.\*

Patents. Law. Enactment No. 3 of February 1, 1916.

IT IS HEREBY ENACTED BY HIS HIGHNESS THE SULTAN OF KELANTAN IN COUNCIL AS FOLLOWS:

- 1. This Enactment may be cited as "The Inventions Enactment, 1916."
- 2. Any person who has obtained a grant (or a renewal of a grant) of patent rights or exclusive privileges for the use of an invention in the Colony of the Straits Settlements or in the Federated Malay States may petition the British Ad-

<sup>\*</sup>Kelantan—one of the British protected Malay States—lies on the eastern side of the Malay Peninsula, has a population of nearly three hundred thousand persons, and an area of 5,500 square miles. Its capital is Kota Bharu.



viser for a grant of exclusive privileges for the use of such invention in the State of Kelantan.

- 3. Such petition shall be in writing, and shall be accompanied by a duly certified copy of the grant of patent rights or exclusive privileges in the Colony of the Straits Settlements or in the Federated Malay States, as the case may be, and a duly certified copy of the complete specification of the invention.
- 4. The British Adviser, if he is satisfied that the granting of exclusive privileges for the use of such invention in Kelantan would not be prejudicial to the public interest, may cause the certified copy of the grant in the Colony or the Federated Malay States, as the case may be, to be registered in his office and such registration shall have the effect of conferring upon the grantee, for the term of his grant, the same privileges in Kelantan as shall have been conferred upon him by the grant in the Colony or the Federated Malay States.
- 5. (1) If the patent rights or exclusive privileges granted in the Colony or the Federated Malay States are at any time revoked, the same privileges conferred on the grantee by registration under section 4 hereof shall *ipso facto* terminate on the date of such revocation.
- (2) Except as in section 6 hereinafter provided, if the term of any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration extended in the Colony or the Federated Malay States, as the case may be, the privileges conferred upon the grantee by such registration shall terminate on the date on which they would have terminated had the term not been so extended.
- (3) Except as in section 7 hereinafter provided, if any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration amended in the Colony or the Federated Malay States, as the case may be, the privileges conferred upon the grantee by such registration shall ipso facto terminate on the date when such amendment was allowed and recorded in the Colony or the Federated Malay States.
- 6. If the term of any grant of patent rights or exclusive privileges which has been registered under section 4 hereof is at any time after the date of such registration extended in the Colony or the Federated Malay States, as the case may be, and the grantee desires the extension to take effect in Kelantan, he shall transmit to the British Adviser a certificate of such extension together with a petition praying that such extension may take place in Kelantan. Upon receipt of such certificate and petition, the British Adviser may allow or refuse to allow the extension to take effect in Kelantan, as he may deem proper.
- 7. Whenever an amendment relating to any invention as to which privileges have been obtained in Kelantan by registration under section 4 hereof has been allowed and recorded in the Colony or the Federated Malay States, as the case may be, and the grantee desires the amendment to take effect in Kelantan, he shall transmit to the British Adviser a duly certified copy of the amended Grant and a duly certified copy of the amended specification together with a petition praying that such amendment may take effect in Kelantan. Upon receipt of such certified copies and petition, the British Adviser may allow or refuse to allow the amendment to take effect in Kelantan, as he may deem proper.
- 8. The grantee shall without delay transmit to the British Adviser written particulars of every assignment of his patent rights or exclusive privileges in the Colony or the Federated Malay States.

9. In the Office of the British Adviser there shall be kept a register wherein shall be entered particulars of all petitions and grants under this Enactment and particulars of all transactions relating to such petitions and grants. The petitions shall be numbered serially.

10. The following fees shall be paid by the grantee:

For	registration	under	section	4	\$50.00
- 66	"	"	44	6	\$25.00
"	66	"	"	7	\$25.00

# France.

# Patents. Of Interest to National Defense. "War Measures." Law of April 12, 1916,

(Translation.)

LAW RELATIVE TO INVENTIONS OF INTEREST TO THE NATIONAL DEFENSE.

The Senate and the Chamber of Deputies have adopted,

The President of the Republic promulgates the law whereof the text follows:

Art. I. In modification of the provisions of the first article of the Law of July 5, 1844, the Ministers of War and Navy may be authorized by decree, on condition of an adequate indemnity, to pay to inventors or to their assignees, grantees, or exclusive licencees; to expropriate or have exploited, either in the workshops of the State, (or) in private industrial shops, inventions of interest to the national defense, being the subject of patent applications or of patents granted.

The Ministers of War and Navy, as well as the Minister of Public Instruction of Fine Arts and of Inventions of Interest to the National Defense, are, for this purpose, authorized to have inquiry made at the National Office of Industrial Property concerning all patent applications filed.

The decree shall involve, according to the case, the absolute and final expropriation, or the partial or temporary dispossession of the exclusive right of exploitation of the invention reserved to the inventor. It shall be issued after due notice by a commission named by decree and composed of: a Counsellor of State, President, a representative of the Ministry of Commerce and Industry, a representative of the Ministry of War, a representative of the Ministry of Navy, and a representative of the Ministry of Public Instruction, of Fine Arts and of Inventions of Interest to the National Defense, the last three having but a single vote.

If it is a matter of an invention for which the patent has not yet been delivered, the decree may determine that it shall be suspended on delivery and on publication thereof;

The indemnity to be paid to the inventor shall be fixed by private agreement, or, if there be disagreement, by three arbiters, named, one by the Ministry or Ministers interested, another by the inventor, and the third by the two others, or, in default of agreement, by the First President of the Court of Appeals of Paris. The first two arbiters shall be named within the month that succeeds the notification of the decree to the inventor; on failure of agreement between the arbiters in the designation of the third arbiter, the First President shall be appealed to by the more diligent party for the purpose of making a nomination.

The arbiters must render their decision within the term of two months

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counting from the constitution of the arbitral tribunal. The arbitral tribunal shall decide without appeal as to the amount of indemnity to be allowed to the inventor and upon the methods of payment; its decision shall not be susceptible of appeal except to the Court of Cassation on the ground of deficient formalities. The expenses of arbitration shall be borne by the State.

Art. 2. By reason of the state of war, when the publication of an invention wherefor a patent application has been filed is susceptible of presenting dangers or inconveniences for the national defense, a decision of the Minister of Commerce and Industry, made on the recommendation of the Commission provided for in the foregoing article, may prohibit any disclosure or exploitation of the said invention.

This decision is notified to the inventor or to his attorney within the term of two months counting from the filing of the patent application, and, for all applications under consideration, within a term of three months counting from the promulgation of the present law. The delivery, as well as the official publication of the patent and of the specification of the invention, shall remain, the matter being completed, provisionally suspended. No official copy of the documents filed accompanying the patent application shall be delivered in the future, unless validly accepted reasons be furnished concerning the destination of the copy applied for.

Art. 3. Every Frenchman or foreigner admitted to domicile is prohibited from filing abroad, either directly or through attorney, any patent application being the subject of the provisions of Arts. 1 and 2.

The same persons are likewise prohibited from depositing abroad any patent application for any invention pertaining to the navy or to navigation, aerostation or aviation, armament, artillery, or military engineering, telegraphy or telephony, powders or explosives, asphyxiating and inflammable materials, and generally to any object susceptible of interesting the army or navy, as well as disclosing or exploiting abroad any invention relative to an object of this character.

However, a French or foreign inventor may, through special decision of the Minister of Commerce, on the recommendation of the Commission provided in the preceding articles, be authorized to file in an allied or neutral country a patent application concerning an invention contemplated in the present law, and, the case allowed, to there exploit the said invention. The decision shall be made within a term that shall not exceed three months counting from the application to this effect presented at the National Office of Industrial Property.

- Art. 4. Every breach of the provisions of the present law shall be punishable by the penalties provided in Art. 2 of the law of April 18, 1886, concerning espionage, whether it has been committed in France or abroad.
- Art. 5. The present law shall remain applicable for the duration of the war and until a date that shall be fixed by decree on the cessation of hostilities.

The present law, deliberated and adopted by the Senate and the Chamber of Deputies, shall be executed as a law of the State.

Done at Paris, April 12, 1916.

(Signed) R. POINCARÉ.

(Signatures of Ministers.)
(From Journal Officiel de la République Française, April 14, 1916.)

## Brazil.

Trade Marks. Commercial Council of Rio de Janeiro. Attributes. Decree No. 9210, of Dec. 15, 1914.

(Translation.)

REGULATION OF THE COMMERCIAL COUNCIL OF RIO DE JANEIRO. (Decree No. 9210, of Dec. 15, 1914.)

Provisions Relative to Trade Marks.

Sec. i.—Chap. 3.—Powers of the Commercial Council.

Art. 30. It is the duty of the Commercial Council:

Sec. 7. To order the registration:

- (b) Of domestic or foreign industrial or commercial marks;
- Sec. 8. In whatever concerns the international registration of industrial and commercial marks:
- (a) To examine the applications of manufacturers or merchants domiciled in Brazil proprietors of registered marks, who shall desire to assure to these marks legal protection in the countries signatory of the Arrangement of April 14, 1891, or those that shall adhere thereto in the future, and to forward them to the Ministry of Agriculture, Industry, and Trade, advising whether the registration exists or has become of no effect through failure of complementary deposit or by expiration of the term fixed in Art. 11 of Law No. 1236 of Sept. 24, 1904, and whether the provision of Art. 8, Nos. 5 or 6, of the above cited law is applicable to the mark in cases of identity or of resemblance sufficient to create confusion between this mark and another registered on a prior date;
  - (b) To correct such applications if they are not in order.

Sec. 10. To order the deposit in the archives:

(c) Of marks registered in the international register that shall be transmitted to it by the Direction General of Industry and Commerce with the notification of the International Bureau of Industrial Property at Berne; the Council shall proceed to a detailed examination, in order to inform the Government in due time whether any of the marks has been comprehended in the before mentioned Art. 8, Nos. 5 or 6, of Law No. 1236, and whether, as such, it may enjoy protection in the territory of the Republic.

If there occurs a change in the ownership of a mark registered in the international register, the Council shall send to the Direction General of Industry and Commerce—to be referred to the proper bureau—the application of the party interested, in duplicate, accompanied by an attestation of the corresponding instrument:

(d) Two copies of the publication of international marks, when the Council shall have received them from the Direction General of Industry, on addressing notification to the Commercial Association of this Capital and to the Councils of the different States;

Sec. 12. To order the deposit of domestic or foreign industrial or commercial marks.

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Sec. 13. To order the cancellation of assignments of marks that shall not have become, within the term of thirty days counting from the decision of the Council, the subject of the publication prescribed by Art. 17 of Decree No. 5424, of Jan. 10, 1905.

Sec. 14. Not to permit modification of registered marks, either in their designs, or in the legends, figures, or words that characterize them.

CHAP. 8.—CONCERNING THE REGISTRATION OF INDUSTRIAL AND COMMERCIAL MARKS AND THAT OF COMMERCIAL OR CORPORATE NAMES.

Art. 56. The registration of industrial and commercial marks must be effected with the Commercial Council, in conformity with Law No. 1236, of Sept. 24, 1904, and to the regulation approved by Decree No. 5424, of Jan. 10, 1905.

Art. 57. Whoever shall make application for the registration of industrial or commercial marks must establish his qualification as manufacturer or merchant.

Sole Paragraph. Once the classification mentioned in Art. 69, Sec. 15, shall have been approved and published, the Council shall require that the depositor declare in the descriptive copies of the marks the class to which it belongs, in accordance with this classification, (and) the goods that shall bear the mark.

Art. 58. Industrial marks shall be affixed to not more than one class of goods, while commercial marks may cover several classes, which must be specified.

Art. 62. The facsimiles of the international marks of manufacture and of commerce shall be bound at the end of each year, and there shall be included with the volume an index, mentioning, in alphabetical order, the nature of the goods and the name of the proprietor.

#### CHAP. Q .- APPEALS.

Art. 65. Appeal may be made to the Court of Appeals from decisions of the Council:

1. That reject or authorize the registration of domestic or foreign industrial or commercial marks, or that reject the deposit of foreign marks or of marks of the Brazilian States.

Art. 66. The term for the filing of appeal is five days counted from the date whereon the decision of the Council was published. If the interested party does not reside in the locality and has no special attorney, the said term shall commence to run thirty days after this publication.

Sole Paragraph. The appeal presented to the Secretary's Office of the Council shall be received by the official designated for this purpose, without any prior decision having to be made.

Sec. 2.—Sole Chapter.—Concerning the Secretary's Office of the Commercial Council.

Art. 69. It is the duty of the Director of the Secretary's Office, in addition to his attributes indicated in Art. 127 of the regulation annexed to Decree No. 8899, of Aug. 11, 1911:

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Sec. 2. To issue his orders in writing concerning:

- (d) The registration and deposit of domestic and foreign marks of manufacture and commerce, and concerning the deposit in the archives of the marks recorded in the international register;
- Sec. 15. To arrange the classification of the goods intended to bear registered marks, which shall be published in the Diario Official after having been approved by the Minister. (From 32 La Propriété Industrielle, 54.)

# Patents. Designs. Models. Trade Marks. Direction General of Industry and Commerce. Powers. Regulation No. 11,436 of Jan. 13, 1915.

(Translation.)

REGULATION OF THE OFFICE OF THE SECRETARY OF STATE OF AGRICULTURE, INDUSTRY, AND COMMERCE. (No. 11,436, of Jan. 13, 1915.)

Provisions Relative to Industrial Property.

Art. 13. The Direction General of Industry and of Commerce shall be composed of two Sections that shall have charge, from an administrative point of view, of the following matters:

Sec. 1. The First Section:

- 5. Marks of manufacture and of commerce.
- 9. Matters concerning patents of invention, and industrial designs and models.

(From 32 La Propriété Industrielle, 55.)

# Italy.

Patents. Commission of Appeals. Constitution and Powers. Decree of March 2, 1916.

Temporary Decree of Dec. 31, 1915, No. 1990, relative to the composition of the Commission for the Examination of Appeals from the Refusal or Suspension of Patents. (Published in the Gazzetta Ufficiále, March 2, 1916, No. 51.)

Tomaso di Savoia, Duke of Genoa, Lieutenant General of His Majesty,

Vittorio Emanuele III, by the Grace of God and the Will of the Nation, King of Italy,

By virtue of the authority of Us delegated;

In view of the Patent Law of Oct. 30, 1859, No. 3731;

In view of the Royal Decree of Oct. 2, 1913, No. 1237, which approves the Regulation for the application of said law;

In view of the Temporary Decree of Nov. 18, 1915, No. 1620, wherein economies in the various Administrations of the State are established;

On the proposition of the Minister of State for Agriculture, Industry, and Commerce;

WE HAVE DECREED AND DO DECREE:

Art. 1. Dating from January 1, 1916, the Commission for the examination of



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appeals from the refusal or the suspension of certificates of patent shall be reduced to nine members named annually by the Minister, three of whom lawyers belonging to the irremovable magistracy or to the Faculty of Jurisprudence of the Royal University of Rome; and the other six technicians selected from those qualified of the class of physical science and mathematics of the Royal Academy of Science, or from the professors of said sciences in the Royal University or in the Technical Institutes.

Art. 2. The President of the Commission shall be named by the Minister from among the members named by him.

The Chief of the Office of Industrial Property shall be a member of the Commission, with the right of discussion. An official of the same Office shall be called by the Minister to assist the Commission as Secretary.

The three Sections, Physical, Chemical and Mechanical, into which the Commission is divided, shall be composed each of one legal member and two technical members.

Art. 2. To those comprising the Commission, including the Secretary, for each session wherein they participate, there shall be allowed an attendance fee of L. 10, in addition to the travelling and living expenses for the members that do not reside in Rome.

We command that the present decree, under seal of the State, be entered in the Official Collection of Laws and Decrees of the Kingdom of Italy, commanding those concerned to observe it and to cause it to be observed.

Given at Agliè, on the thirty-first day of December, 1915.

(Signed) TOMASO DI SAVOIA.

G. CAVASOLA.

(From 15 Bollettino della Proprietà Intellettuale, Fasc. 3 to 6, p. 34.)

# Patents. Applications. Specification in English Language. The Sperry Gyrascope Company. Appeal. Rejection. Decision.

UNITED SECTIONS.—DEC. 8, 1915. GUI, President; NAVARRINI, Reporter; THE SPERRY GYRASCOPE COMPANY, Appellant.

Industrial patents—Application—Filing of specification in English language—Later deposit of specification in Italian—Rejection.

It being held in fact that the so-called The Sperry Gyrascope Company filed with the Office of Intellectual Property on Jan. 15, 1915, through intermediary of Ing. Letterio Laboccetta, an application for patent for an invention designated with the title: "Improvements in stabilizing apparatuses," there being mentioned therein a specification of the invention drawn up in the English language;

Later—on March 6, 1915—it deposited in triplicate the specification in the Italian language;

The Office asked for the opinion of the Physical Section as to whether the application should be rejected for being without the specification in the Italian or French language at the time of filing the documents;

The Section, in the hearing of June 16, 1915—Prof. Navarrini, spokesman—expressed the opinion of having to reject the application, for the reason that on its filing the specification in the Italian or French language was not also deposited;

The Office, in consequence, returned the application, with notification of the action, to the attorney on July 7, 1915;

Against the rejection an appeal in writing was filed on July 15, 1915.

The argument made by the appellant claimed that the case of a specification drawn up in a language different from the Italian or French is not one of those contemplated by the law in Art. 39, as such, for which letters patent must be denied, and that, it being a matter of fiscal and exceptional provisions, it could not be extended to hypotheses not in contemplation and devoid of any foundation. Assuredly the provision of Art. 39 is an exceptional provision; but it is a fundamental principle of law that if exceptional provisions cannot be interpreted by analogy, they are, nevertheless, susceptible of elastic interpretation, an interpretation consisting not only in extending the legislative intention to other hypotheses not contemplated, and which only present some point of contact with those contemplated, but in giving to the legislative intention all the extension that it ought logically to have, embracing, albeit, cases not expressly contemplated, but which undoubtedly were within the purview of the legislator. Now, if this is so, here is the whole question: the provision that establishes that the certificate shall be denied . . . when the specification is lacking (Art. 39, No. 3), may be extended to the case wherein the specification is not really lacking, but is written in a language that, according to the intent of the legislator (Art. 22), ought not to be held suitable for carrying the object of the invention to the knowledge of the public? It suffices to formulate the demand in order that the affirmative response shall impose itself. Everyone knows, in fact, that the specification has an exceptional importance as regards this, that the invention for which the patent is solicited on a certain day remain individualized before the public. Now, to the end that the invention be made understandable to the Italian public, it is necessary and imprescriptible that it be drawn up in the Italian language, or in a language that the Law of 1850 likens to the national language. A specification presented later in that language cannot have the same effect, for the reason that it will always be met with the specification originally presented on the day from which the exclusive rights start to run. By admitting as effective the filing of a specification in another language, the public will, in consequence, be deprived of a necessary measure of control, and likewise, judgments would be rendered difficult, there having also to be reference therein to the specification in the foreign language first filed. In fine, the possibility would be less that the original intent of the law would be effectively carried out, and it may truly be said that the specification, under those conditions, is lacking. In the legislative intention, in other terms, the present hypothesis necessarily contemplates that of the specification lacking.

The applicability of Art. 39 is therefore unmistakable, and there is no occasion to invoke Art. 40, which concerns a quite different hypothesis: there may not be considered as lacking a specification of a "required character," but the specification, however it is given, must be considered as nonexistent.

FOR THESE REASONS:

The Commission, in view of Arts. 22 and 39, No. 3, of the Patent Law of June 30, 1859, No. 3751, unanimously rejects the appeal filed by "The Sperry Gyrascope Company" from the refusal of letters patent on the part of the Office of Intellectual Property, and orders that the deposit go to the Treasury.

Thus decided Dec. 8, 1915. (Translation from 15 Bollettino della Proprietà Intellettuale, Fasc. III to VI, p. 37.)

# Australian Commonwealth.

Patents. Working. Partial Suspension. "War Measures." Patents Act (Partial Suspension) Act No. 13 of 1916. Assented to May 30, 1916.

An Act to suspend the operation of Section Eighty-seven A of the *Patents Act*, 1903-1909, during the continuance of the present War and for a period of six months thereafter.

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

#### Short Title.

- 1. This Act may be cited as the Patents Act (Partial Suspension) Act 1916.

  Temporary Suspension of the Patents Act, 1903-1909, s. 87A.
- 2. The operation of section eighty-seven A of the Patents Act, 1903-1909, shall be suspended during the continuance of the present war, and for a period of six months thereafter, and in reckoning the period of four years mentioned in that section the period during which that section is suspended by virtue of this Act shall not be taken into account. (From 24 Australian Official Journal of Patents, 544.)

Note: For lack of space we cannot give the text of Section 87A, but same may be consulted in 8 P. & T. M. Rev., 3038. It refers to the working of patents. Correspondents in Australia, however, call our attention to Section 87 (not affected by this partial suspension) of the same Act—see 2 P. & T. M. Rev., 772, and for amendment, Vol. 8, p. 3037—wherein proviso is made that if adequate working be not accomplished through default of the patentee, compulsory license or avoidance of the patent may be ordered, and the advisability of complying with the nominal working requirements, when the patent is not to be worked in the Commonwealth, is suggested.

# Gibraltar.

## Patents. Law. Ordinance No. 2 of January 16, 1913.

An Ordinance to empower the Governor to grant privileges in Gibraltar to persons to whom Letters Patent in respect of inventions have been granted in the United Kingdom.

Be it enacted by His Excellency the Governor of the City and Garrison of Gibraltar as follows:

#### Short Title.

- I. This Ordinance may be cited as "The Patent Ordinance Gibraltar, 1913."

  Grant of Privileges in Gibraltar.
- 2. (I) Where any person has, by virtue of His Majesty's Letters Patent, obtained exclusive rights and privileges in the United Kingdom in respect of any invention, he, hereinafter called the patentee, or any assignee of such Letters Patent on his behalf, or the executors or administrators of the estate of such patentee, or any such assignee on their behalf, may apply by petition to the Governor to grant to such patentee, or to his executors or the administrators of his estate as the case may be, exclusive privileges under this Ordinance in Gibraltar in respect of such invention, and the Governor may, if he shall think fit, grant such exclusive privileges, subject to the provisions of this Ordinance.
  - (2) Before any such grant shall issue, the applicant shall furnish a cer-

tificate by the Registrar of the Supreme Court to the effect that a duly certified copy of the said Letters Patent, of the complete specification describing the nature of the said invention, and of the assignment or other document of title, if any, by which the applicant may claim to be entitled to apply for such grant, has been filed in the Registry of the Supreme Court.

(3) Every grant of exclusive privileges under this Ordinance shall be notified in the Official Gazette, and the notification shall state the name and address of the patentee and of the applicant, if other than the patentee, the number and year of the Letters Patent in the United Kingdom, and the period during which the grant shall be in force.

### Effect of Grant.

- 3. (1) From and after the issue and notification of such grant of exclusive privileges in Gibraltar, the person in whose favour such grant has been made shall have full power, special licence, sole privilege and authority, that he, by himself, his agents and licensees and no others, may at all times thereafter, during the period mentioned in such grant, make, use, exercise, and vend, in Gibraltar the invention which is the subject of the Letters Patent referred to in such grant, and shall have in respect thereof in Gibraltar the same rights and privileges, subject to the same conditions and restrictions affecting it, in so far as applicable to Gibraltar, as he is entitled to in the United Kingdom, subject to the conditions and restrictions provided in this Ordinance, and, subject as aforesaid, shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention during the said period. Provided always that the Officers administering any Department of His Majesty's service at Gibraltar may, by themselves, their agents, contractors or others, use the said invention for the services of the Crown in such manner, at such times, and at and upon such reasonable prices and terms as before or after the use thereof shall be agreed upon between those Officers, with the approval of the Governor, and the grantee, or in default of such agreement on such terms as may be settled by the Chief Justice in a summary manner after hearing all parties concerned.
- (2) All rights and privileges enjoyed by any person by virtue of a grant under this Ordinance shall, where the document from which they draw their title has been duly registered as hereinafter provided, extend to his executors, administrators and assigns to the same extent in all respects and subject to the same conditions and restrictions, as to such person himself, as from the date when such document of title shall purport to take effect.

# Effect of Avoidance of Letters Patent.

4. If the said Letters Patent shall at any time be determined and declared void within the United Kingdom, any grant of exclusive privileges in respect of the invention to which they refer shall thereupon, ipso facto, become void and of no effect in Gibraltar.

## Registration of Documents of Title, etc.

5. (1) In addition to the documents described in section 2 of this Ordinance, there may be filed in the Registry of the Supreme Court certified copies of assignments and transmissions of, or licences under, such privileges, probates of wills, letters of administration, or other documents of title affecting such privileges, of grants of extension of the Letters Patent of the United Kingdom, and of any other document concerning such Letters Patent as may in any way affect such privileges.

- (2) A book, to be called the Patent Register, shall be kept by the Registrar of the Supreme Court, in which he shall register the particulars of any documents the filing of which in the Registry of the Supreme Court is provided for by this Ordinance.
- (3) No such document shall be valid or take effect in Gibraltar for affecting the title to, or extending the period of enjoyment of such privileges, unless it shall have been duly filed and registered, except in the case of the Letters Patent set forth in Schedule B to this Ordinance. (Schedule B is omitted.)

# Registers to be prima facie evidence of matters entered.

6. The Patent Register and the Register of Patents of the United Kingdom shall be *primâ facie* evidence of the matters directed by this Ordinance or by the Imperial Patents and Designs Act, 1907, to be entered therein respectively.

### Certified Copy of Entry Evidence.

7. A certified copy of an entry in the Patent Registry signed by the Registrar and bearing the seal of the Supreme Court shall be admitted in evidence in all Courts, and in all proceedings, without further proof or production of the original.

#### Rules to be made by the Governor.

8. The Governor may make Rules providing for the particulars to be entered in the Patent Register, the fees to be charged in respect of the filing of any document, the furnishing of a certified copy of any entry, an inspection of the Register, or of any document filed in the Registry, and for the further and better carrying out of the provisions of this Ordinance.

All such Rules shall be published in the Official Gazette, and from the date of such publication shall be of full force and effect as if enacted in this Ordinance.

# Patent Register, &c., to be Open to Inspection.

9. The Patent Register and all documents relating to entries therein which may have been duly filed, shall be open to the inspection of any person during office hours, on payment of the prescribed fees.

#### Fee for Grant.

10. A fee of five pounds shall be payable in respect of every grant made under the provisions of this Ordinance.

### Saving for Prerogatives of Crown.

11. Nothing in any grant made under this Ordinance shall prejudice, abridge, or derogate from, the prerogatives of His Majesty, his heirs and successors.

#### Repeal of certain Ordinances.

12. The Ordinances set forth in Schedule A to this Ordinance are hereby repealed. (Schedule A is omitted.)

Grant of Privileges to Persons benefiting by the Ordinances Repealed.

13. The persons whose names are set forth in the first column of Schedule B to this Ordinance are hereby granted exclusive privileges in respect of the inventions referred to in the corresponding Letters Patent set forth in the second column of the same Schedule, for the corresponding period set forth in the third column of the same Schedule, together with such period of extension, if any, as may have been granted in the United Kingdom, in the same manner and to the same extent as if exclusive privileges had been granted to



them by the Governor under this Ordinance, and any assignment, transmission, licence, or other devolution that may have taken place of any privileges granted under any Ordinance hereby repealed shall take effect as if it referred to the privileges hereby granted. Provided always that the conditions and provisions of this Ordinance respecting the filing of documents and registration of particulars shall not apply to such persons in so far as relates to such Letters Patent, anything in this Ordinance to the contrary notwithstanding.

Provided also that it shall be open to such person to file any such document and procure any such particulars to be registered, if he shall so desire.

#### When to come into force.

14. This Ordinance shall come into force forthwith. (From Patent Laws of the World (Supp. 32) of The Chartered Institute of Patent Agents.)

# Ecuador.

## Trade Marks. Law of Oct. 28, 1908, as Amended Sept. 14, 1914.

(Translation.)

#### CHAP. I.

#### Preliminaries.

- Art. 1. A mark is any sign, emblem, word, phrase, or special or characteristic designation, used to distinguish articles and to denote their origin.
  - Art. 2. An article is any industrial product.
- Art. 3. Any person, natural or legal, native or foreign, has the right to distinguish his articles by means of a mark and to register it in accordance with this Law.
  - Art. 4. Marks are domestic or foreign.

They are domestic when they are used on articles produced in the Republic;

They are foreign when they are used on articles produced outside of the Republic.

Domestic marks, as well as foreign, are subject to the provisions of this Law, and enjoy the same rights.

- Art. 5. A mark may consist of anything that is not prohibited by this Law, and which serves to distinguish certain articles from others, identical or similar, but of different origin.
  - Art. 6. There shall not be registered as marks:
- 1. Letters, words, names, coats of arms, emblems or insignia that are used by the Nation, Municipalities or even by foreign States or Cities;
  - 2. Immoral expressions or designs;
- 3. The name of a person, natural or legal, unless it be presented in a peculiar or distinctive form;
- 4. A mark already registered or used by another, similar thereto, if it be intended for articles of the same nature; and
- 5. The name or portrait of a person, without his consent or that of his heirs, if he be deceased.

#### CHAP. II.

#### The Use and Ownership of a Mark.

Art. 7. The use and registration of a mark is optional, but shall be obligatory when the public welfare requires it.

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- Art. 8. A mark may be used on the article itself, or on the wrappers or packages that contain it.
- Art. 9. He is the owner of a mark that first has made use thereof to distinguish his articles, but the mark shall not enjoy the rights and guarantees that this Law grants unless it be registered.
- Art. 10. The ownership of a mark consists in the right to use it exclusively for the articles for which it is intended.

If the mark be domestic and be not used within the year wherein it has been granted, the concession shall become void.

If the mark is foreign, the importation of the article into Ecuador is not necessary.

Art. 11. A mark may be bequeathed or transferred.

Art. 12. A mark may only be transferred along with the industry to which the article for which it is intended belongs; and the sale of the industry shall include that of the mark, save contrary stipulation. Every assignment of a registered mark shall be recorded in the Register; unless this be done, it shall have no effect.

#### CHAP. III.

### Concerning the Register and Registration.

- Art. 13. The registry of marks shall continue under the direction of the Minister of Finance.
- Art. 14. The registration of a mark may be applied for in person or through an attorney with power of attorney granted by public instrument.
- Art. 15. The application for registration shall be presented to the Ministry of Finance. With the application shall be included:
  - 1. Power of attorney, if applicant appear by attorney;
  - 2. Twenty facsimiles of the mark;
- 3. The cliché of the mark. The length or breadth of the cliché shall not be less than 15 millimetres, nor greater than 100 millimetres, and its height shall be from 20 to 30 millimetres. If a mark be made up of several separate parts, a cliché shall be sent for each one of them;
- 4. A receipt from the National Treasury wherein is evidenced the payment of the fees prescribed in this Law;
- 5. The consent in writing—in the case mentioned in Sec. 5\* of Art. 6. This consent shall not be necessary when it be a matter of a foreign mark duly registered in the country of its origin. Neither shall it be necessary on the renewal of a mark already registered according to this Law.
  - Art. 16. In the application there shall be stated:
  - I. The name and domicile of the owner of the mark;
- 2. A specification or detailed description of the mark, setting out the reservations that are made concerning its essential parts;
  - 3. The article or articles for which the mark is intended;
  - 4. The nationality of the mark;
  - 5. The country and the city or place wherein the article is manufactured.
- Art. 17. The application being presented, the Sub-Secretary of the Minister shall make note of the day and hour whereon he receives it, shall number and sign each of the sheets and shall bring it to the attention of the Minister within

<sup>\*</sup>The law reads: "In the case mentioned in Sec. 8 of Art. 6." By comparing Art. 6, supra, with the text of the same article in the Law of Oct. 28, 1908, it will be noted that the section in question is now Sec. 5.

three days. Unless he brings it to his attention within that time, a fine of twenty sucres shall be imposed upon him for each day of delay.

Art. 18. If the application be in accordance with Arts. 15 and 16, and if the mark does not contravene Art. 6, the Minister shall order that the facsimile of the mark be published twelve times, seven days at least intervening between each two publications. In addition, at the bottom of the facsimile, in synthetic form, a statement concerning the application shall be made.—Said publication shall be made on delivery of the receipt of the National Treasury by which is evidenced that the fees prescribed by this Law have been paid.

Art. 19. If any one alleges that the mark, the registration of which is concerned, belongs to him by reason of having been registered and used previously, or that the mark contravenes Art. 6, he may make opposition to the registration thereof. In this case, the Minister shall send the data to any one of the District Judges of the Capital of the Republic, in order that he decide the controversy according to ordinary procedure.

- Art. 20. The application having been published and the term of the publication having passed, or if there be no opposition, the Minister shall order the registration of the mark.
- Art. 21. Whoever may believe himself injured may solicit the cancellation of the registration, if it be registered; but this action shall be brought within five years, counted from the date of the registration. The case shall be tried according to ordinary judicial procedure.
- Art. 22. In the actions provided for in the preceding Arts., 19 and 21, if the decision be favorable to the plaintiff, the registration shall be cancelled or the application shall be rejected, in case of opposition. In both actions he that loses shall be sentenced to the payment of losses, damages, and costs.
- Art. 23. The owner of the mark shall pay for the right of registration or renewal twenty-five sucres; for the registration and certificate of assignment ten sucres; and for each publication one sucre.
- Art. 24. It is not necessary that the publication prescribed in Art. 18 take place for the renewal of a mark previously registered according to this Law.
- Art. 25. In the same decree in which the Minister grants the registration he shall order that the record be filed, and that the copies asked for by the applicant be delivered to him. The Minister shall return to the applicant, with notation, one of the facsimiles of the mark.
- Art. 26. The decree of registration shall be inscribed verbatim in the Register, thus fixing the date thereof.
- Art. 27. The effects of registration shall retroact to the date on which it was solicited.
- Art. 28. The Register shall be made up each year of the registrations that have been effected from the first of January until the thirty-first of December.

Registrations shall be effected in sequence, without leaving between one and another more space than that of one line, and being numbered according to the date of the decree in regard to registration.

At the end of each Register shall be made an alphabetical index of the applicants, there being stated the number of the registration and the page whereon it appears.

Likewise, the records shall be numbered, and the numbering shall correspond to that of the registration.

Art. 29. The registration of a mark shall only be valid for twenty years;

this period having terminated, it shall lapse, unless its renewal shall have been obtained in good time. Each renewal shall continue for twenty years, and shall incur the same fees as were paid to obtain the registration.

Every registration may be renewed before it lapses, and after the fees prescribed by this Law have been paid. The corresponding receipt having been presented to the Sub-Secretary of the Ministry, this latter shall note in the Register the renewal of the mark, and shall give to the interested party a certificate, or shall note the renewal on the copy mentioned in Art. 25.

Art. 30. The paper that shall be used for applications and matters concerning registration shall be stamped paper of the fifth class.

Art. 31. The Sub-Secretary of the Ministry shall be required to give, on the respective stamped paper and without requiring fees the copies that may be asked for of him.

#### CHAP. IV

## Concerning Names, Signs, etc.

- Art. 32. The name of a merchant or producer, of a firm, of a corporation, the sign or designation of a house or establishment that deals in certain articles or products, constitutes a property for the purposes of this Law.
- Art. 33. He that wishes to carry on an industry, business, or branch already exploited by another person, with the same name or with the same conventional designation, shall adopt a modification of such a nature that that name or that designation be visibly distinct from that which the pre-existing house or establishment uses.
- Art. 34. If the party injured by the use of a name does not bring action within the term of one year from the day whereon it commenced to be publicly used by another, he shall lose his right to any action. This action shall be tried in ordinary judicial proceedings before the District Judge.
- Art. 35. Corporations shall have right to the name that they bear, the same as any private person, and are subject to the same restrictions.
- Art. 36. The right to the exclusive use of a name shall be extinguished with the business house that bears it, or with the branch enterprise for which it was intended.

#### CHAP. V.

#### Penalties.

- Art. 37. They shall be punished with a fine of from five hundred to one thousand sucres, and imprisonment of from six months to one year:
  - I. That imitate an original mark;
  - 2. That sell or offer for sale, buy or have in their possession counterfeit marks;
- 3. That sell or offer for sale, buy or have in their possession genuine marks without the consent of the owner, which is presumed when there is protest on the part of this latter;
- 4. That make use of counterfeit marks, affixing them on their articles that they manufacture or on the goods in which they deal, which is presumed against him that has, sells, or offers for sale said goods thus offered;
  - 5. That sell or retail goods that bear a counterfeit mark;
- 6. That use marks that bear false indications on the articles that they manufacture or on the goods that they handle, concerning the nature, quantity, quality, origin, or source of either the former or latter; or that claim falsely that they



have been awarded titles, medals, diplomas, or other distinctions, at expositions or otherwise:

- 7. That, without imitating a mark, shall remove or separate it from certain articles in order to affix it to others;
- 8. That shall place their name, that of their establishment, or any other word or sign upon an original mark;
- 9. That refill containers with spurious products bearing another's mark; they that refill with products that do not correspond with the genuine products mentioned in the mark that the container bears; they that mix genuine products that have original marks with others, extraneous and spurious; they that sell, retail, or have in their possession these products. This last is presumed if such shall be found in their stores, warehouses, or shops.
- Art. 38. The guilty party shall be condemned to the payment of costs, damages, and injuries in favor of the party injured.
- Art. 39. All the counterfeit marks, except the one that shall remain a part of the record, shall be destroyed by the Secretary, in the presence of the Judge and two witnesses. This shall take place after the experts submit their report, if they hold therein that they are counterfeit.
- Art. 40. Articles that bear counterfeit marks shall be sold at public auction, provided that they are not harmful—in which case they shall be destroyed—and the proceeds shall be divided in equal parts between the Treasury and the informant. If the mark be used on the article itself, it shall first be destroyed.
- Art. 41. It shall be presumed that an article is offered for sale if it be kept in a store, warehouse or shop.
- Art. 42. A counterfeit mark is one not registered, like or similar to one registered. There is similarity when two marks have one or more similar essential particulars, or when they may be confounded at first sight, and when only by means of a detailed examination it is possible to distinguish the one from the other.

#### CHAP. VI.

#### Procedure.

- Art. 43. The infractions mentioned in this Law may be officially prosecuted.

  Art. 44. The corpus delicti shall be established by the report of the experts, if they determine that there is imitation. There shall be two experts, named by the parties; and with regard to recusation, the proviso in the Code of Civil Procedure shall be followed.
- Art. 45. The accused, if there be against them any of the presumptions established in this Law, shall be immediately committed to prison, unless they give bail of five thousand *sucres*, and the goods shall be deposited with a responsible person until the termination of the proceedings.
- Art. 46. The Minister of Finance shall send to each Customs Officer copies of the registrations of foreign marks that have been or shall be registered, with a facsimile of each mark.
- Art. 47. When it is a question of importing goods with counterfeit marks, the Customs Officer shall place them at the disposition of any Justice of the Peace, as well as the invoices, manifests, and other documents that refer to them.

The omission of this duty will make him responsible for complicity in the offense, without prejudice to a fine of five hundred *sucres*, which the Minister of Finance shall impose on him.

Art. 48. Every machine or instrument intended for the counterfeiting of marks shall be confiscated.

Art. 49. Registrations effected up to the date on which this Law is decreed \* shall remain in force for twenty years, counting from that date, and shall enjoy during that period the benefits prescribed by by this Law. Said registrations should be renewed on the expiration of the twenty years to which this article refers.

Note: The above translation is made from the "Edicion Oficial" of the Ley de Marcas (the official text), prepared in accordance with the provision of Art. 14 of the amending Decree of Sept. 14, 1914; it will be found to differ in some respects from the translation of that decree which appeared at 13 P. & T. M. Rev., 54.

# South African Union.

Designs. Law (Consolidating and Amending\*). Patents, Designs, Trade Marks and Copyright Act, 1916. Assented to April 15, 1916.\*\*

CHAPTER III.\*\*\*

DESIGNS.

Interpretation of Terms Used in This Chapter.

76. For the purposes of this Chapter—

"article," in relation to designs, shall mean any article of manufacture and any substance artificial or natural or partly artificial and partly natural;

"copyright," in relation to designs, shall mean the exclusive right to apply

a design to any article in any class in which the design is registered;

"design" shall mean any design applicable to any article whether for the pattern, for the shape or configuration, or for the ornament thereof or for any two or more of such purposes and by whatever means it is applicable whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever manual, mechanical, or chemical, separate or combined, not being a design for sculpture;

"proprietor of a new or original design" shall-

- (a) where the author of the design executes the work for some other person, mean the person for whom the design is so executed; and
- (b) where any person acquires the design or the right to apply the design to any article either exclusively of any other person or otherwise, mean, in the respect and to the extent in, and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
- (c) in any other case, mean the author of the design and where the property in or the right to apply the design has devolved from the original proprietor upon any other person shall include that other person;

"Provincial Designs Act" shall mean any law relating to designs in force in a Province on the 31st day of May, 1910, and shall include all regulations in force under such law.

<sup>•</sup> Oct. 28, 1908.

<sup>\*</sup>Consolidating the laws of Cape of Good Hope, Natal, Orange Free States, and Transvaal.
\*\*At the time of going to press we have received word that there is little probability
of any part of this Act becoming effective before 1917.
\*\*\*For "Introductory" provisions of this Act see 14 P. & T. M. Rev., 263, for "General
and Supplementary Provisions" see page 310.

#### PART I.—TRANSITIONAL PROVISIONS.

# Saving as to Existing Proceedings Rights and Liabilities Under Provincial Designs Act.

7. The provisions of this Chapter shall not affect any proceedings under any Provincial Designs Act nor (except where otherwise expressly provided) any right or liability acquired or incurred before the commencement of this Chapter; and any pending proceedings may be continued and completed, as if this Chapter had not been enacted.

# Registration by Proprietor Under Provincial Designs Act of Design Under This Chapter.

- 78. (1) The registered proprietor of a design under a Provincial Designs Act, where copyright is in force at the time, may apply for registration under this Chapter. Save as otherwise prescribed, the procedure in such a case shall be subject to the payment of any prescribed fees, and shall be the same as in the case of an ordinary application.
- (2) The registrar may register such design under this Chapter; but if he is satisfied that the design is not new or original or has been published in any Province other than the one in which it is registered under the Provincial Designs Act, then any such Province may be excepted by entry duly made in the register from the effect of the registration under this Chapter.
- (3) The copyright secured by registration under this section shall not extend beyond the unexpired period of the copyright under the Provincial Designs Act.

#### Transfer of Administration of Provincial Designs Act.

- 79. (1) The Governor-General may, by proclamation in the Gazette, declare that, on a date therein specified the administration of any Provincial Designs Act of any Province shall be transferred to the designs office established under this Act.
- (2) On and after that date no application for registration under a Provincial Designs Act of that Province shall be receivable except pursuant to some right previously acquired; and all the provisions of Chapter I with regard to the administration of Provincial Patent Acts, to the transference of powers and functions thereunder, and to the substitution of the provisions of this Act for those of such Acts shall apply mutatis mutandis to the administration and the provisions of the Provincial Designs Acts concerned and to the transference of powers and functions thereunder.

#### PART II.—REGISTRATION OF DESIGNS.

Manner and Form of Registration of Designs and Conditions of Registration.

- 80. (1) The registrar may, on the application (made in the prescribed form and manner), of any person claiming to be the proprietor of any new or original design not previously used in the Union, and not described in any printed publication nor registered or patented in the Union or in any other country, register the design under this Chapter.
- (2) The same design may be registered in more than one class; and in case of doubt as to the class in which a design ought to be registered, the register may decide the question.
- (3) The exhibition at an industrial or international exhibition, certified as such by the Minister, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the

holding of any such exhibition, of a description of a design shall not prevent the design from being registered, or invalidate the registration thereof: Provided that—

- (a) the exhibitor, before exhibiting the design or article or publishing a description of the design, gives the registrar the prescribed notice of his intention to do so; and
- (b) the application for registration is made before or within six months from the date of the opening of the exhibition.
- (4) The registration by the proprietor, his assignee or legal representative, of any design in a country outside the Union, whether a British possession or not, shall not be a bar to the registration by the same person of the same design in the Union: Provided that the application for registration in the Union shall be made within four months of the date of the first registration in any such other country.
- (5) The use in the Union during the aforesaid period of such design or the publication in the Union or in any other country during such period of a description or representation of such design shall not invalidate the registration of the design under this section.
- (6) The registrar may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by such refusal may appeal therefrom to the court. The court may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.
- (7) The registrar may refuse to register a design of which the use would in his opinion be contrary to law or morality; such refusal shall be subject to an appeal to the court and the provisions of sub-section (6) shall apply.
- (8) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable the registration to be effected within the prescribed time shall be deemed to be abandoned.
- (9) A design when registered shall be registered as from the date of the application for registration.

## Registration of Designs in More than One Class.

- 81. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it, in some one or more other classes, shall not be refused, nor shall the registration thereof be invalidated—
  - (a) on the ground of a design not being a new or original design, by reason only that it was previously registered; or
  - (b) on the ground of the design having been previously published in the Union, by reason only that it has been applied to goods of any class in which it was so previously registered.

#### Certificate of Registration.

- 82. (1) The registrar shall grant a certificate of registration to the proprietor of the design when registered.
- (2) The registrar may, in case of loss of the original certificate or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

#### Keeping of Register of Designs.

83. (1) There shall be kept at the designs office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments, and of transmissions of registered designs, and such other matters as may be prescribed.

(2) After the date specified in any proclamation issued under section seventy-nine, the register of designs of the Province to which such proclamation refers shall be deemed to be incorporated with and to form part of the register of designs under this Chapter.

#### Cancellation of Registration.

84. The registrar may, on request in writing accompanied by the prescribed fee cancel the registration of a design, either wholly or in respect of any particular goods in connection with which the design is registered.

### Jurisdiction of Court to Rectify Register of Designs.

- 85. (1) Where a person becomes entitled, by assignment, transmission or other operation of law to the copyright in a registered design, the registrar shall, on request and on proof of title to his satisfaction, register him as the proprietor of the design.
- (2) Where a person becomes entitled to any interest in a design the registrar shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs.

# Jurisdiction of Court to Rectify Register of Designs.

- 86. (1) The court may, on the application of any person aggrieved by the non-insertion in, or omission from, the register of designs of any entry, or by any entry made without sufficient cause or wrongly remaining in such register, or by an error or defect in any entry in such register, give such order for making, expunging or varying such entry as it may think fit.
- (2) The court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection with the register and may, if it thinks fit, direct that any Province shall be excepted from the effect of the registration of any design.

#### PART III.—COPYRIGHT IN REGISTERED DESIGNS.

# Duration of Copyright in Registered Designs.

- 87. (1) When a design is registered, the registered proprietor of the design shall, save as is provided in section *seventy-eight*, have copyright in the design during five years from the date of registration.
- (2) If, within the prescribed time, before the expiration of the said five years, application for the extension of the period of copyright is made to the registrar in the prescribed manner the registrar shall, on payment of the prescribed fee, extend the period of copyright for a second term of five years from the expiration of the original period.
- (3) If within the prescribed time before the expiration of such second term, application for further extension is made to the registrar in the prescribed manner, he may, subject to any rules under this Chapter, and on payment of the prescribed fee, extend the period of copyright for a third term of five years from the expiration of the second term.

# Assignment and Dealing with Registered Design by Proprietor Thereof.

- 88. (1) The person registered as the proprietor of a design shall, subject to the provisions of this Chapter and to any rights appearing from the register to be vested in any other person, have power to assign, grant licences as to, or otherwise deal with, the design.
- (2) The provisions of sub-section (1) shall not protect any person dealing with the registered proprietor other than as a bona fide purchaser for value and without notice of any fraud on the part of the registered proprietor.



Duties of Proprietor Before Delivery on Sale of Articles to Which Registered Design has been Applied.

- 89. (1) Before the delivery on sale of any articles to which a registered design has been applied, the proprietor shall—
  - (a) (if exact representations or specimens were not furnished on the application for registration) furnish to the registrar the prescribed number of exact representations or specimens of the design; and if he fails to do so, the registrar may erase his name from the register, and thereupon the copyright in the design shall cease; and
  - (b) cause each such article to be marked with the prescribed mark, or with the prescribed mark or figures, denoting that the design is registered; and if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design, unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.
- (2) Where a representation is made to the Governor-General by or on behalf of any trade or industry that in the interests of such trade or industry it is expedient to dispense with or modify, as regards any class or description of articles, any of the requirements of this section as to marking, the Governor-General may, by rule under this Act, dispense with or modify such requirements, as regards any such class or description of articles to such extent and subject to such conditions as he thinks advisable.

Disclosure of Design in Certain Circumstances not to be such Publication as Would Invalidate the Copyright Thereof.

90. The disclosure of a design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor, and the acceptance of a first and confidential order for goods bearing a new or original design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof, if registration thereof is obtained subsequently to the disclosure or acceptance.

No Inspection of Designs During Existence of Copyright Thereof.

- 91. (1) During the existence of copyright in a design, or such shorter period (not being less than two years from the registration of the design) as may be prescribed, the design shall not be open to inspection, except by the proprietor, or a person authorized in writing by him, or a person authorized by the registrar, or by the court, and furnishing such information as may entitle the registrar to identify the design, and shall not be open to the inspection of any person, except in the presence of the registrar, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take a copy of the design or any part thereof: Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.
- (2) After the expiration of the copyright in a design or of such shorter period as aforesaid, the design shall be open for inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information by Registrar as to Existence of Registration.

92. On the request of any person furnishing such information as may enable the registrar to identify the design, and on payment of the prescribed fee, the registrar shall inform such person whether the registration still exists in respect of such design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

#### PART IV.-LEGAL PROCEEDINGS.

### Protection of Design During Copyright.

- 93. (1) During the existence of copyright in any design, it shall not be lawful for any person—
  - (a) for the purposes of sale to apply or cause to be applied to any article, in any class of goods in which the design is registered, the design, or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
  - (b) knowing that the design, or any fraudulent or obvious imitation thereof, has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.
- (2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds recoverable as a liquidated debt; or if the proprietor elects to bring an action for damages for such contravention, and for an interdict against the repetition thereof, he shall be liable to pay such damages as may be awarded, and to be restrained by interdict accordingly: Provided that the total sum recoverable as a liquidated debt, in respect of any one design shall not exceed one hundred pounds.

# Application of Remedies Under Chapter I in the Case of Registered Designs.

94. The provisions of Chapter I with regard to certificates of the validity of a patent, and to the remedy in the case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs, in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

#### PART V.—GENERAL.

# Applications and Documents Lodged Therewith not to be Open to Public Inspection After Abandonment.

95. When an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the registrar.

# United States.

Patents. Trade Marks. Prints. Labels. Applications. Fees. Reciprocal Extension of Terms. Act of July 17, 1916.

#### AN ACT

To extend temporarily the time for filing applications and fees and taking action in the United States Patent Office in favor of nations granting reciprocal rights to United States Citizens.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any applicant for letters patent or for the registration of any trade-mark, print, or label, being within the provisions of this Act, if unable on account of the existing and continuing state of war to file any application or pay any official fee or take any required action within the period now limited by law, shall be granted an extension of nine months beyond the expiration of said period.

- SEC. 2. That the provisions of this Act shall be limited to citizens or subjects of countries which extend substantially similar privileges to the citizens of the United States, and no extension shall be granted under this Act to the citizens or subjects of any country while said country is at war with the United States.
- SEC. 3. That this Act shall be operative to relieve from default under existing law occurring since August first, nineteen hundred and fourteen, and before the first day of January, nineteen hundred and eighteen, and all applications and letters patent and registrations in the filing or prosecution whereof default has occurred for which this Act grants relief shall have the same force and effect as if said default had not occurred.

Approved August 17, 1916.

Patents. Of Interest to National Defense. Hammond Radiodynamic Torpedo Control. Act (Amending Sec. 4894 R. S.) of July 6, 1916.

229 O. G., 270.

Department of the Interior, United States Patent Office.

Washington, D. C., July 21, 1916.

The following excerpt from the act of July 6, 1916, pertaining to the armament and defense of the United States, is published for the information of those concerned.

(Signed) THOMAS EWING, Commissioner.

(Copy.)

An act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial, and service, and for other purposes.

For the procurement of the exclusive rights of John Hays Hammond, junior, and the Radio Engineering Company of New York (Incorporated) to their discoveries and inventions in the art of control by radiodynamic energy of the movement of water-borne carriers of high explosives, in accordance with a proposal heretofore made by said John Hays Hammond, junior, and said company known as proposal Z, \$750,000: Provided, That said sum shall not be paid except upon the approval by the President of a report of a board of three Army and three

Navy officers, to be appointed by him, which report shall be favorable to the acquisition of such rights, such report to be made after a demonstration of the application of the said system to the control of torpedoes; and, to provide for such demonstration, \$30,000 of the sum so appropriated, or so much thereof as may be necessary for the purpose, may be applied to the expense of conducting the same exclusive of the services of said Hammond, which services shall be rendered free of charge, the amount so applied and which shall be immediately available, in the event of the purchase of such rights, to be considered as part payment of the purchase price of the same.

The Commissioner of Patents is authorized and directed in the event of the entrance by the Government into a contract with the above-mentioned parties for the purchase of such rights in all instances where it would grant patents to John Hays Hammond, junior, or to the Radio Engineering Company upon request of the United States to issue said patents to the United States, and, in the event of said contract being made, the Commissioner of Patents is further authorized and directed to keep applications for such patents in the secret archives of the Patent Office, not open to disclosure even in cases of interferences.

For procurement and installation of one radiodynamic torpedo unit, \$417,000: Provided, That no part of said sum shall be so expended unless the United States shall first acquire as heretofore provided the rights of the said John Hays Hammond, junior, and the Radio Engineering Company of New York.

Section forty-eight hundred and ninety-four of the Revised Statutes is amended so as to read as follows:

"Sec. 4804. All applications for patents shall be completed and prepared for examination within one year after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner of Patents that such delay was unavoidable: Provided, however, That no application shall be regarded as abandoned which has become the property of the Government of the United States and with respect to which the head of any department of the Government shall have certified to the Commissioner of Patents, within a period of three years, that the invention disclosed therein is important to the armament or defense of the United States: Provided, further, That within ninety days, and not less than thirty days, before the expiration of any such three-year period the Commissioner of Patents shall, in writing, notify the head of the department interested in any pending application for patent, of the approaching expiration of the three-year period within which any application for patent shall have been pending."

Approved July 6, 1916.

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Official Journals. Contents.

LA PROPRIÉTÉ INDUSTRIELLE.

JUNE.

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UNOFFICIAL PART. General Observations: Compulsory licenses granted by reason of the present state of war.

Jurisprudence: GERMANY. Collective mark; deposit by a syndicate; refusal of registration in the name of one of its members.—SWITZERLAND. I. Patent; right of prosecution for infringement; license; conflict of laws.—II. Patent; definition of the invention; importance of the claims; partial nullity.

Miscellaneous News: Great Britain. Report of the Comptroller-General of Patents for 1915. Utilization of the industrial property of subjects of enemy countries.

Bibliography: New work (Van der Haeghen); periodicals.

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Domestic Legislation: VENEZUELA. Penal Code of 1915, Arts. 320 to 322.

British Colonial Legislation: II. Colonies, Possessions, Protectorates.

East Africa Protectorate. I. Proclamation concerning the coming into force of the English law of 1911 (July 1, 1912).—II. Ordinance concerning the registration of books and periodicals (Sept. 21, 1906).

UNOFFICIAL PART. General Observations: The cinematograph from the legislative, doctrinal, and judicial point of view (First part).

Correspondence: Letter from England: Cinematography: Cinematographic adaptation of a novel, burlesque parody, absence of resemblance and of reproduction.—Works excluded from protection by reasons of public order (immorality). Assignment of the exclusive right for the entire world; discussion; countries protecting cinematographic rights. Assignment of the whole copyright before the new law of 1911; unfavorable results unforeseen for the author; duration of rights.—Specific assignment of the rights of reproduction and of representation by cinematography; consequences.—Power of the holder of a license to act at law.

Jurisprudence: GERMANY. I. Adaptation of a novel as a cinematographic work; modifications not essential.—II. Cinematographic work of an American house, protected by the treaty of 1892, according to the law of 1907, and assigned to a German house; illicit loan of a copy of film of legal Austrian origin, but not exhibited generally by the owner.—III. Title of a novel fallen into public domain; legal reproduction of a novel by cinematography under the same title; lack of exclusive right to the title.—Austria. Illicit location and exhibition of a cinematographic film representing a Danish dramatic work; protection according to the law of 1895 as a non-photographic work; reciprocity.

Miscellaneous News: Spain-Salvador. Exchange of notes on the subject of official prosecution, or prosecution on complaint, of piracies.—Hungary. Manifestation in favor of the protection of art applied to industry.

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